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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-]

RIN 2060-AJ99

Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA is proposing two discrete frameworks to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). ~~The EPA is~~We are proposing this rule so that States may know which statutory requirements apply for purposes of developing State implementation plans (SIPs) under the Clean Air Act (CAA) to implement the 8-hour ozone NAAQS. The intended effect of the rule is to provide certainty to States regarding their planning obligations such that States may begin SIP development upon designation and classification for the 8-hour standard. Following are the principles that guided

~~EPA~~us in the development of these frameworks to implement the 8-hour ozone standard: 1) To protect public health, provide incentives for expeditious attainment of the 8-hour ozone standard and avoid incentives for delay; 2) To provide reasonable but expeditious attainment deadlines; 3) To have a basic, straightforward structure that can be communicated easily; 4) To provide flexibility to States and EPA on implementation approaches and control measures while ensuring that the implementation strategy is supported by the CAA; 5) To emphasize national and regional measures to help areas come into attainment and, where possible, reduce the need for those local controls that are more expensive than national and regional measures; and 6) To provide a smooth transition from implementation of the 1-hour ozone NAAQS to implementation of the 8-hour ozone NAAQS. In addition, ~~EPA~~we intend~~s~~ to clarify the role of Tribes in implementing the 8-hour ozone NAAQS.

The two frameworks ~~EPA is~~we are proposing are based on two different classification options, which affect the requirements that would apply to individual nonattainment areas. ~~The EPA~~We prefer~~s~~ classification Option 2 because it provides more flexibility to States and Tribes as they

address their unique air quality problems. This is likely to allow some areas to attain the standard at a lower cost. However, ~~EPA is~~we are also soliciting comments on Option 1, in part because it is less complex and may be easier to communicate, as well as on other ways to classify nonattainment areas.

This proposed rulemaking does not propose to establish attainment/nonattainment designations nor does it address the principles that will be considered in the designation process; ~~EPA~~we ha~~s~~ve already issued guidance on the principles that States should consider in making designation recommendations, and ~~EPA~~we will issue further guidance separate from this rulemaking if appropriate. Finally, ~~EPA is~~we are not taking comment at this time on appropriate tests under the 8-hour standard for demonstrating conformity of Federal actions to SIPs. ~~The EPA~~We intend~~s~~ to conduct separate rulemaking on this issue prior to designating areas under the 8-hour ozone standard.

In this proposal, we do not yet propose regulatory text for 40 CFR Part 51, primarily because a number of options are being proposed for many of the implementation elements, and we believe it would be better to obtain public comment

on the options conceptually first. After we receive and consider comment on the proposed options, but before publishing a final rule, we will publish a supplemental proposed rule with regulatory text; we anticipate that this would occur in late summer of 2003. We also plan to publish shortly after this proposal regulatory text relating to anti-backsliding based on the proposal published herein.

DATES: Comments must be received on or before (**insert date 60 days from date of publication**). ~~The EPA~~We has~~ve~~ scheduled hearings on this proposal for **[dates and places]**.

ADDRESSES: All comments should be submitted to Docket #A-2001-31. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, N.W., Room: B108; Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, N.W., Room: B108; Mail Code: 6102T, Washington, DC 20004. The normal business hours are 8:30

a.m. to 4:30 p.m. Comments can be submitted to the address above, by fax (202) 566-1741, or by e-mail to A-and-R-Docket@epa.gov. The voice telephone number is (202) 566-1742. In addition, ~~the EPA~~we has~~ve~~ placed a variety of materials regarding implementation options on the web site: http://www.epa.~~gov/ttn/naaqs/ozone/ozonetech/o3imp8hr/o3imp8hr.htm~~gov/ttn/naaqs/ozone/o3imp8hr/. While this web site is not an exact duplicate of the Air Docket, ~~EPA~~we has~~ve~~ placed materials that we have generated and materials that have been submitted in an electronic format on the web site. We request comments by e-mail if possible to facilitate expeditious distribution within EPA and placement on the web site.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5666 or by e-mail at: silvasi.john@epa.gov or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5550 or by e-mail at: gerth.denise@epa.gov.

SUPPLEMENTARY INFORMATION

This notice uses a number of acronyms and terms that are defined when first used. A list appears in Appendix D for convenience.

OUTLINE

I. What is the 8-hour ozone problem and EPA's strategy for addressing it?
- A. What is the ozone standard and the health problem?
- B. What is the geographic extent of the 8-hour ozone problem?
- C. What is EPA's overall strategy for reducing ozone pollution?
  1. The SIP system.
  2. National rules.
- D. What is the relationship between the SIP system proposed and the proposed Clear Skies legislation?

II. What is the background on the 8-hour ozone standard?
- A. What is the legal background?
- B. What technical work influenced EPA's implementation approach?

III. How did EPA obtain stakeholder input for this effort?

IV. What is EPA's schedule for issuing an 8-hour ozone implementation rule?

V. In short, what does this proposed rulemaking contain?
- A. Classification of Areas
- B. Attainment Deadlines
- C. ~~T~~How will EPA implement the transition from the 1-hour to ~~8-Hour Ozone Standard~~
- ~~D. Anti-backsliding Provisions~~
- ~~E~~the 8-hour standard in a way to ensure continued momentum in States' efforts toward cleaner air?
- D. Mandatory Measures
- ~~F~~E. Consequences of Failure to Attain
- ~~G~~F. Interstate Transport

~~H~~G. Modeling and Attainment Demonstration
~~I~~H. Reasonable Further Progress (RFP)
1. Requirement for 15 percent VOC reductions for moderate and above areas during the first 6 years after the base year.
2. Base Year
~~J~~I. RACM/RACT
~~K~~J. Conformity
~~L~~K. New Source Review

VI. What are EPA's proposed frameworks for implementing the 8-hour ozone standard?

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2. EPA's development of options.
3. Options for classification.
4. Under classification option 2, how would EPA classify subpart 1 areas?
5. Rationale for regulating all "Gap" areas under subpart 1 only.
6. Proposed incentive feature.
7. Other options EPA considered.
8. Implications for the options.
9. Other considerations.

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3. How do attainment dates apply to Indian country?
4. How will EPA establish attainment dates for areas classified as marginal under the "incentive" feature proposed under the classification section or areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date?

C. How will EPA implement the transition from the 1-hour to the 8-hour standard~~?~~

~~[THIS SECTION AND THE NEXT BEING RESTRUCTURED]~~

~~D.~~ in a way to ensure continued momentum in States' efforts toward cleaner air?

1. Background
2. What obligations should continue to apply as an area begins to implement the 8-hour ozone NAAQS and what obligations should no longer apply?
3. Does the requirement for continued implementation of the obligations addressed above expire at some point?
4. When will EPA revoke the 1-hour standard?
5. How will EPA ensure that the ~~applicable requirements of the CAA continue to apply under the mechanism selected for transitioning from the 1-hour to the 8-hour standard?~~

~~E~~public knows which areas must continue provisions under the 1-hour SIPs if EPA revokes the 1-hour standard?

D. Should prescribed requirements of subpart 2 apply in all 8-hour nonattainment areas classified under subpart 2, or is there flexibility in application in certain narrowly defined circumstances?

1. Background.
2. Approach being proposed.
3. Other Approaches Considered

~~F~~E. What is the required timeframe for obtaining emission reductions to ensure attainment by the attainment date?

~~G~~F. How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?

1. Background.
2. The EPA's Proposed Approach.
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4. Other Options Considered.

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2. Multi-State Nonattainment Areas.
3. Intrastate transport
4. International Transport.

5. Additional ways of addressing transport
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~~I~~H. How will EPA address requirements for modeling and attainment demonstration SIPs when implementing the 8-hour ozone standard?

1. Multi-pollutant assessments (one-atmosphere modeling).
2. Areas with early attainment dates.
3. Areas with later attainment dates.
4. Modeling guidance.
5. Mid-Course review.

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2. Proposed Features in General.
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4. What baseline year should be required for the emission inventory for the RFP requirement
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9. How should the RFP requirements be implemented for areas designated for the 8-hour ozone standard that entirely or in part encompass an area that was designated nonattainment for the 1-hour ozone standard?
~~10. Should EPA use the RFP requirement to address an upwind State's responsibility under section 110(a)(2)(D), which requires that the SIP provide for preventing a significant contribution to a downwind jurisdiction's nonattainment situation?~~
1~~1~~0. Will EPA's "Clean Data Policy" continue to

apply under the 8-hour standard for RFP?

~~12~~1. How will RFP be addressed in Tribal areas?

~~13~~2. How will RFP targets be calculated?

~~K~~J. Are contingency measures required in the event of failure to meet a milestone or attain the 8-hour ozone NAAQS?

1. Background.

2. Proposal

~~L~~K. What requirements should apply for RACM and RACT for 8-hour ozone nonattainment areas?

1. Background.

2. Proposed approach for RACT in general for areas covered under subpart 2.

3. Proposed approach for RACT in general for areas covered under subpart 1.

4. Proposed approach for previous source-specific major source RACT determinations.

5. Proposed approach for NO_x RACT determinations in areas affected by the NO_x SIP Call.

~~5~~6. Proposed approach for NO_x as an ozone precursor.

~~6~~7. Proposed approach for RACM.

~~7~~8. Proposed submission date for RACT and RACM requirements.

~~M~~L. How will the section 182(f) NO_x provisions be handled under the 8-hour ozone standard?

~~N~~M. What requirements for transportation conformity should apply under the 8-hour ozone standard?

1. What is transportation conformity?

2. Why is EPA discussing transportation conformity in this proposed rulemaking?

3. Are any changes being made to transportation conformity in this proposed rulemaking?

4. When does transportation conformity apply to 8-hour ozone nonattainment areas?

5. How does the 1-year grace period apply in metropolitan areas?

6. How does the 1-year grace period apply in isolated rural areas?

7. Does conformity apply for the 1-hour ozone standard once the 1-hour ozone standard is revoked?

8. Would transportation conformity apply if motor

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9. What are EPA's plans for amending the conformity rule to address the 8-hour ozone standard?

10. What impact will the implementation of the 8-hour ozone standard have on a State's Transportation Conformity SIP?

~~O~~N. What requirements for general conformity should apply to the 8-hour ozone standard?

1. What is the purpose of the general conformity regulations?

2. How is the general conformity program currently structured?

3. Who runs the general conformity program?

4. How does an agency demonstrate conformity?

5. General conformity regulations revisions for the 8-hour ozone standard.

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1. Background

2. Nonattainment NSR under the 8-hour ozone standard

3. Under what circumstances is a transitional program needed during the interim period?

4. Elements of the Appendix S transitional program.

5. Will a State be required to assure that the increased emissions from a new major source do not cause or contribute to a violation in a nearby nonattainment area before it issues a preconstruction permit under Appendix S?

6. What happens at the end of the interim period?

7. What is the legal basis for providing this transitional program?

8. How should the NSR requirements be implemented for new 8-hour ozone areas that encompass the old 1-hour ozone nonattainment areas after EPA revokes the 1-hour ozone standard?

9. NSR Option to Encourage Development Patterns that Reduce Overall Emissions--Clean Air Development Communities.

10. Tribal Concerns.

~~O~~P. How will EPA ensure that the 8-hour ozone standard will be implemented in a way which allows an optimal mix of controls for ozone, $PM_{2.5}$, and regional haze?

1. Could an area's 8-hour ozone strategy affect its $PM_{2.5}$ and/or regional haze strategy?
2. What guidance has EPA provided regarding ozone, $PM_{2.5}$ and regional haze interaction?
3. What is EPA proposing?

~~R~~Q. What emission inventory requirements should apply under the 8-hour ozone NAAQS?

~~S~~R. What guidance should be provided that is specific to Tribes?

~~T~~S. What are the requirements for OTRs under the 8-hour ozone standard?

~~U~~T. Are there any additional requirements related to enforcement and compliance?

~~V~~U. What requirements should apply to emergency episodes?

~~W~~V. What ambient monitoring requirements will apply under the 8-hour ozone NAAQS?

~~X~~W. When will EPA require 8-hour attainment demonstration SIP submissions?

1. Background.
2. Option being proposed.

VII. Proposal of integrated frameworks using various options

VIII. Other Considerations.

A. Will EPA be contemplating incentives for areas that want to take early action for reducing ozone under the 8-hour standard?

1. What are the Ozone Flex Guidelines for the 1-hour ozone NAAQS?
2. What is the "Early Action Compact" for implementing the 8-hour ozone NAAQS?
3. What is EPA's response to the Texas "Early Action Compact"?
4. Did EPA consider other options for incentives for areas that take early actions for reducing ozone?
5. What is the difference between the early

I. WHAT IS THE 8-HOUR OZONE PROBLEM AND EPA'S STRATEGY FOR ADDRESSING IT?

A. What is the ozone standard and the health problem?

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the atmosphere in the presence of heat and sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller "area" sources.

In 1979, ~~EPA~~we promulgated the 0.12 ppm, 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, ~~EPA~~we promulgated a revised standard of 0.08 ppm, measured over an 8-hour period (i.e., the 8-hour standard). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard than there are areas that do not meet the 1-hour standard. At the time that ~~EPA~~we promulgated the revised 8-hour standard, ~~EPA~~we also promulgated a rule providing for the phase-out of the 1-hour standard, [62 FR 38856 (codified at 50.9(b)]. That rule provided that the 1-hour standard would no longer apply to an area once ~~EPA~~we determined that the

area had attained the 1-hour standard.[1]

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

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[1]Due to the continued litigation over the 8-hour standard, EPA revised 40 CFR 50.9(b) in July 2000, to limit its authority to revoke the 1-hour standard until such time as the 8-hour standard became fully enforceable and no longer subject to legal challenge. (65 FR 45182, July 20, 2000).

More detailed information on health effects of ozone can be found at the following web site: http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html .

The focus of today's proposed rule is implementation of the revised 8-hour ozone air quality standard issued by EPA in 1997, including the transition from implementation of the 1-hour standard to implementation of the 8-hour standard.

B. What is the geographic extent of the 8-hour ozone problem?

Although the nation as a whole has made significant progress since 1970 in reducing ground-level ozone pollution (sometimes called "smog"), ozone remains a significant public health concern. At present, unhealthy ozone levels--exceeding the 8-hour standard--occur over wide geographic areas including most of the nation's major population centers. These areas include much of the eastern half of the United States and large areas of California.

The geographic extent of the 8-hour ozone problem is expected to shrink between now and 2020 due to existing regulatory requirements. ~~The EPA~~We estimate~~s~~ that existing control measures (e.g., Federal motor vehicle standards,

EPA's regional NO_x rule known as the NO_x SIP Call, and local measures already adopted under the CAA) will dramatically reduce the number of areas[2] not attaining the 8-hour ozone standard--from 122 in 2000 (using data from 1998, 1999, and 2000), to 51 in 2007, to 30 in 2010 and 13 in 2020. See Table 1 below.

The total population living in areas that ~~EPA~~we ha~~s~~ve hypothesized may be designated nonattainment is also projected to decline over time--from 178 million in 2000, to 143 million in 2007, to 116 million in 2010, to 82 million

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[2]See discussion below on how EPA has developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options. Modeling analyses for projections to 2007 are found in: U.S. Environmental Protection Agency, Office of Air and Radiation, Technical Support Document for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Air Quality Modeling Analyses. EPA420-R-00-028. December 2000. Located at: http://www.epa.gov/otaq/regs/hd2007/frm/r00028.pdf.

Information on the modeling analyses for projections to 2010 and 2020 are found in "Technical Addendum: Methodologies for the Benefit Analysis of the Clear Skies Initiative." September 2002. This can be found at the following web site: http://www.epa.gov/clearskies/Tech_adden.PDF. Results are summarized in "Human Health and Environmental Benefits Achieved by the Clear Skies Initiative." July 1, 2002. http://www.epa.gov/clearskies/CSIhealth_env_benefits7-01.ppt

in 2020. However, the number of people living in areas with excessive ozone levels remains high for the foreseeable future because existing control programs alone will not eliminate unhealthy ozone levels in some of the nation's largest population centers.

TABLE 1

8-HOUR OZONE HYPOTHETICAL NONATTAINMENT AREAS AND POPULATION (projected by modeling)

Note: The number of areas[3] projected to each future year is based on modeled projections without consideration of application of new emission control measures that would be required under the SIP process for areas designated nonattainment for the 8-hour NAAQS.

	2000	2007	2010	2020
Number of areas-base case (without Clear Skies Act controls)	122	51	30	13
Number of areas with Clear Skies Act controls	122	51	24	12
Population (millions)-base case (without Clear Skies Act controls)	178	143	116	82.4
Population (millions)-with Clear Skies Act controls	178	143	103	82.1

[3]See discussion below on how ~~EPA~~we ha~~s~~ve developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options.

Based on information in EPA's Trends Report issued in 2002,[4] over the past 20 years, national ambient ozone levels decreased 18 percent based on 1-hour data and 11 percent based on 8-hour data. Between 1982 and 2001, emissions of VOCs decreased 16 percent. During that same time period, emissions of NO_x increased 9 percent. For the period 1982 to 2001, the downward trend in 1-hour ozone levels seen nationally is reflected in every broad geographic area in the country. The Northeast and West exhibited the most substantial improvement, while the South and North Central regions experienced the least rapid progress in lowering ozone concentrations. Similar to the 1-hour ozone trends, all regions experienced improvements in 8-hour ozone levels between 1982 and 2001 except the North Central region, which showed little change during this period. Again, the West and Northeast have exhibited the most substantial reductions in 8-hour ozone levels for the past 20 years.

C. What is EPA's overall strategy for reducing ozone

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[4]Latest Findings on National Air Quality--2001 Status and Trends. U.S. EPA; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Research Triangle Park, NC. September 2002. EPA 454/K-02-001. Found at: http://www.epa.gov/airtrends/ozone.html.

pollution?

~~The EPA's~~Our overall strategy for achieving the 8-hour ozone standard is based on the structure outlined in the CAA. The Act gives both the States and EPA important roles in implementing national air quality standards.

States have primary responsibility for developing and implementing SIPs that contain local and in-State measures needed to achieve the air quality standards in each area. ~~The EPA~~We assist~~s~~ States by providing technical assistance and guidance, including guidance on control measures. In addition, ~~EPA~~we set~~s~~ national emissions limits for sources such as motor vehicles. Where upwind sources contribute to downwind problems in other States, ~~EPA~~we can also ensure that the upwind States address these contributing emissions or regulate them federally, where a State fails to act to address them.

~~The EPA~~We intend~~s~~ to work closely with States and Tribes to use an appropriate combination of national, regional and local pollution reduction measures to meet the standard expeditiously and in a cost-effective manner.

1. The SIP system

States use the SIP process to identify the emissions

sources that contribute to the nonattainment problem in a particular area, and to select the emissions reductions measures most appropriate for that area, considering costs and a variety of local factors. Under the CAA, SIPs must ensure that areas reach attainment as expeditiously as practicable. However, other programs, such as Federal controls, also provide reductions, and States may rely on those reductions when developing their attainment plans.

The SIP system for nonattainment areas is an important component of the CAA's overall strategy for meeting the 8-hour ozone standard, but it is not the only component. As noted below, the CAA also requires or anticipates the use of national rules that will reduce emissions and help achieve cleaner air.

2. National rules

For the States to be successful in developing local plans showing attainment of standards, EPA must do its part to control the sources that are more effectively and efficiently controlled at the national level and to ensure that interstate transport is addressed through SIPs or other means. ~~The EPA~~We already ha~~s~~ve issued key national and regional control requirements for motor vehicles, power

plants and other sources that will enable many areas to meet the 8-hour standard in the near term.

Current emissions standards for new cars, trucks and buses are reducing motor vehicle emissions of VOCs (sometimes referred to as hydrocarbons) and NO_x as older vehicles are retired. Other rules are reducing emissions from several categories of non-road engines. The EPA's Tier 2 motor vehicle emission standards, together with the associated sulfur in gasoline requirements, will provide additional benefits nationally within the time period of many 8-hour ozone nonattainment areas' anticipated attainment dates, (February 10, 2000, 65 FR 6698). Also, ~~EPA~~we published the heavy duty diesel rule on January 18, 2001 (66 FR 5002), which will contribute to reductions needed to meet the 8-hour ozone standard in areas with later attainment dates.

In the eastern U.S., dramatic reductions in NO_x emissions from power plants and large industrial sources will occur by May 2004 under ~~EPA's~~our rules to reduce interstate transport of ozone pollution in the East. These rules are the NO_x SIP Call, published October 27, 1998 (63 FR 57356), and Section 126 Rule, published May 25, 1999 (64

FR 28250).

Also, under the requirements of section 183(e) of the CAA, ~~EPA is~~we are contemplating either Federal rules or control techniques guidelines (CTGs) for controlling VOCs from 15 additional categories of consumer and commercial products. The CTGs assist States in determining required controls for facilities in nonattainment areas. The 15 categories are in addition to six CTGs already published under this provision of the CAA (consumer products, architectural coatings, automobile refinishing coatings, aerospace coatings, wood furniture coatings, and shipbuilding and ship repair coatings). These additional rules or CTGs are expected to be completed over the next few years.

Control measures targeting hazardous air pollutants (HAPs) also result in control of VOCs and, in some cases, NO_x. Under section 112 of the CAA, EPA was required to identify and list categories of industrial facilities that emit significant quantities of one or more of 188 HAPs and establish maximum achievable control technology (MACT) standards for each category of sources. Because most of the organic HAPs are also VOCs, in many cases, control of

organic HAP emissions also achieves reductions in VOC emissions. ~~For stationary reciprocating internal combustion engines, control of organic HAP emissions by non-selective catalytic reduction (NSCR) would also achieve NO_x emission decreases.~~

Rules for most of the listed MACT categories have been promulgated. Although many of the earlier promulgated rules have already resulted in emissions reductions of VOCs, the more recent rules will not begin achieving reductions until the compliance date, which is generally 3 years following promulgation. Therefore, the amount of reductions achieved through control of HAPs that are VOCs will continue to grow over the next several years.

~~The EPA~~We see~~s~~ the potential for significant further emissions reductions from power plants and non-road engines at the national level. The Administration has proposed nationwide legislation, the "Clear Skies Act" (CSA), to reduce power plant emissions of NO_x nationwide, as well as sulfur dioxide and mercury. ~~[THE FOLLOWING SENTENCE WILL BE REVISED] In the absence of, or in conjunction with, this legislation, EPA is also contemplating the development of an interstate transport rule to reduce SO_2 and NO_x emissions.~~

~~The EPA~~We are also is contemplating a national rule that would significantly reduce NO_x emissions from non-road diesel-powered equipment. These non-road sources constitute an important fraction of the NO_x emissions inventory.

D. What is the relationship between the SIP system proposed and the proposed Clear Skies legislation?

A basic issue for implementation of the 8-hour ozone standard is how to treat areas projected to attain the standard based on existing controls. ~~The EPA~~We believe~~s~~ that an appropriate balance should be struck between two goals: avoiding requirements for unnecessary additional controls that increase cost, and ensuring expeditious attainment to protect public health.

Today's proposal contains options that strive to balance these two goals under the authority of current law. The proposal contains two options for classifying areas under the 8-hour ozone standard. Both options contain features to ensure that areas projected to attain in the near term based on existing requirements are not subject to additional prescribed control obligations. Of course, these areas would be subject to the same requirements that apply to all areas designated nonattainment, such as new source

review (NSR) and conformity. However, ~~the EPA is~~we are considering options for providing for more flexible implementation of these requirements, as described elsewhere in this proposed rulemaking, and is actually proposing an option related to NSR in this proposed rulemaking.

The proposed Clear Skies legislation takes a different approach to requirements for areas projected to attain through controls that are already mandated. The proposed CSA includes a provision that would create a new designation of "transitional" for areas that are projected to attain by 2015 based on existing controls, or with the aid of additional SIP controls approved by December 31, 2004. The proposed CSA provides that areas designated transitional would be subject to the requirements of the prevention of significant deterioration program for new sources, which applies in attainment areas. Because "transitional" would be the designation for such areas, they would not be required to adopt additional control measures that would be required for areas designated nonattainment, nor would they be subject to conformity provisions. The provision includes a mid-course check to ensure that the area remains on-track toward attainment. In case of failure to attain by 2015,

the area would be re-designated as a nonattainment area and would be subject to the nonattainment area requirements. ~~The EPA~~We expect~~s~~ that most areas currently exceeding the 8-hour ozone standard could qualify for this designation, in many cases, without further local controls.

However, because the Clear Skies legislation has not been enacted, ~~EPA~~We ha~~s~~ve not considered it in this proposed rulemaking. Should the Clear Skies legislation be enacted into law, ~~EPA~~we would conduct further rulemaking on implementation of the 8-hour ozone standard under such law, if necessary.

II. WHAT IS THE BACKGROUND ON THE 8-HOUR OZONE STANDARD?

A. What is the legal background?

On July 18, 1997, ~~EPA~~we revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of 0.08 parts per million (ppm) as measured over an 8-hour period. At that time, ~~EPA~~we indicated it believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court

of Appeals for the District of Columbia Circuit.[5] In May 1999, the Appeals Court remanded the ozone standard to EPA on the basis that ~~EPA's~~our interpretation of its authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. American Trucking Assns., Inc. v. EPA, 175 F.3d 1027, 1034-1040 (ATA I) aff'd, 195 F.3d 4 (D.C. Cir., 1999)(ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. Id. at 1048-1050.[6] ~~The EPA~~We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. Whitman v. American Trucking Assoc., 121 S.Ct. 903, 911-914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that

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[5] On July 18, 1997, ~~EPA~~we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

[6]The Court addressed a number of other issues, which are not relevant here.

the CAA was clear in requiring implementation only under subpart 2, but determined that ~~EPA's~~our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. Id. at 916-919. Specifically, the Court noted ~~EPA~~we could not ignore the provisions of subpart 2 that "eliminate[] regulatory discretion" allowed by subpart 1. Id. at 918. The Court also identified several portions of the CAA's classification scheme under subpart 2 that are "ill-fitted" to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. Id. Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. Id. at 919. On March 26, 2002, the D.C. Circuit Court rejected all remaining challenges to the ozone and fine particle ($PM_{2.5}$) standards. American Trucking Assoc. v. EPA, 283 F.3d 355 (D.C. Cir. 2002) (ATA III). With that ruling, EPA began to move forward with programs to protect Americans from the wide variety of health problems that these air pollutants can cause, such as respiratory illnesses and premature death.

The implementation rule proposed herein will provide specific requirements for State, local, and Tribal air pollution control agencies to address as they prepare implementation plans to attain and maintain the 8-hour NAAQS. Each State with an area that is not attaining the 8-hour ozone NAAQS will have to develop--as part of its SIP--emission limits and other requirements to attain the NAAQS within the timeframes set forth in the CAA.[7] Tribes with jurisdiction over Tribal lands that are not attaining the 8-hour ozone standard could voluntarily submit a Tribal implementation plan (TIP) but would not be required to do so. However, in cases where a TIP is not submitted, EPA, working with the Tribes, would have the responsibility for planning in those areas.

B. What technical work influenced EPA's implementation approach?

In developing its original approach for implementation of the 8-hour standard, ~~EPA~~we considered input from a variety of technical information sources and experts. ~~The~~

[7] The CAA requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards.

~~EPA~~We originally described the technical information of the physical processes that produce ozone, fine particles, and regional haze and relied on that in developing a proposed implementation approach. See "Implementation of New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations; Proposed Rule" (December 13, 1996, 61 FR 65764). ~~The EPA~~We also participated with States in the eastern United States in the Ozone Transport Assessment Group (OTAG), which documented that long-distance transport of nitrogen oxides across much of the OTAG study area contributed to high levels of ozone. For background on OTAG and the results from the study, see the following web site: http://www.epa.gov/ttn/naaqs/ozone/rto/otag/index.html.

That OTAG process resulted in a report to EPA with the conclusions that included the following:

-Regional NO_x reductions are effective in producing ozone benefits; the more NO_x reduced, the greater the benefit.
-Ozone benefits are greatest where emissions reductions are made; benefits decrease with distance.
-Elevated and low-level NO_x reductions are both effective.
-Volatile organic compound controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.
-Air quality data indicate that ozone is pervasive, that ozone is transported, and that ozone aloft is carried over and transported from one day to the next.

As a result of these recommendations, EPA called for SIP revisions from 22 States and the District of Columbia and established Statewide budgets on NO_x emissions that those jurisdictions would have to meet by 2007. Stationary source emissions reductions to meet the budgets were required to be implemented by May 2004[8]. The purpose of the rule was to address long-range transport by eliminating the significant contribution that each State's NO_x emissions made to both 1-hour and 8-hour ozone nonattainment problems in downwind areas. The call for SIP revisions was challenged by a number of States, industry and interest groups but was largely upheld by the court and has remained a viable means for obtaining significant NO_x emissions reductions.

The OTAG report also recognized that VOC emissions reductions do not play much of a role in long-range transport, and concluded that VOC reductions are effective in reducing ozone locally and are most advantageous to urban

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[8]EPA's NO_x SIP Call mandated reductions by May 2003. However, the Court's stay of the rule pending litigation resulted in a 1-year delay to May 2004.

nonattainment areas.

Under the Federal Advisory Committee Act (FACA), ~~EPA~~we also formed a Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs that provided recommendations and ideas to assist ~~EPA~~us in developing implementation approaches for these programs. ~~The EPA~~We ha~~s~~ve incorporated ideas from the FACA process for a number of SIP elements, particularly those related to transport of ozone, the process for demonstrating attainment of the ozone standard, and requirements for ensuring reasonable further progress. Further information on the FACA process and its reports is found at the following web site: http://www.epa.gov/ttn/faca/.

As noted above, ~~EPA~~we ha~~s~~ve also promulgated national rules that reduce VOC and NO_x emissions (ozone precursors) from mobile and stationary sources, which also help address ozone nonattainment problems. A number of ~~comments received by EPA~~commenters recommended that ~~EPA~~we set additional national standards for more source categories such that States and Tribes do not have to control these sources locally. They suggest that such standards would eliminate the inconsistent regulation that occurs when each

nonattainment area chooses how to regulate sources within its jurisdiction. ~~The EPA~~We continue~~s~~ to review source categories for possible Federal measure development.

This technical backdrop led ~~EPA~~us to be guided by the ~~above-mentioned principle in developing the proposed approach: to emphasize~~principle of emphasizing national and regional measures to help areas come into attainment and, where possible, ~~reduce~~reducing the need for those local controls that are more expensive than national and regional measures. However, as noted below, national and regional measures alone are not anticipated to bring all areas into attainment ~~without~~. Thus, some areas will need to adopt local controls ~~in some areas~~ through the SIP process.

III. HOW DID EPA OBTAIN STAKEHOLDER INPUT FOR THIS EFFORT?

~~The EPA~~We initiated a process to obtain stakeholder feedback on options the Agency developed for implementation of the 8-hour ozone NAAQS. ~~The EPA~~We held three public meetings in addition to a number of conference calls and meetings with State, local and Tribal governments, environmental groups and industry representatives. (The lists of the organizations with whom ~~EPA~~we had discussions are in the docket, in addition to meeting and conference

call summaries.) The purpose of the meetings and conference calls was to obtain stakeholder feedback regarding the options that ~~EPA~~we had developed as well as to listen to any new or different ideas that stakeholders were interested in presenting.

~~The EPA~~We received comments in response to the meetings and conference calls. The comments from the public meetings addressed a number of issues related to the implementation approach.

In addition to comments received at the public meetings, ~~EPA~~we received a number of written comments on how to implement the 8-hour ozone NAAQS. ~~The EPA~~We ha~~s~~ve considered these comments in the implementation approach proposed below.

IV. WHAT IS EPA'S SCHEDULE FOR ISSUING AN 8-HOUR OZONE IMPLEMENTATION RULE?

~~The EPA~~We plan~~s~~ to issue a final rule on an implementation approach by the end of 2003. While there is not a CAA deadline for promulgating a strategy to implement the 8-hour ozone NAAQS, the CAA does establish a deadline for EPA to promulgate designations of nonattainment areas

under section 107 of the CAA.[9] ~~The EPA sought comment on~~We have entered into a consent decree that ~~would require EPA~~s us to promulgate designations by April 15, 2004.~~10~~

The nonattainment designation for an area starts the process whereby a State must develop a SIP that demonstrates how the air quality standard will be attained by the attainment dates required in the CAA. ~~The EPA~~We plan~~s~~ to have an implementation strategy in place prior to designating areas for the 8-hour ozone standard. This will enable areas that are designated nonattainment for the 8-hour ozone standard to understand the obligations that attach to nonattainment designations and associated classifications.

V. IN SHORT, WHAT DOES THIS PROPOSED RULEMAKING CONTAIN?

This summary is intended to give an overview of

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[9]Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA-21) revised the deadline to publish nonattainment designations to provide an additional year (to July 2000), but HR3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

~~EPA's~~our proposed rule~~; however, i~~. It should not be relied on for the details of the actual proposal. The proposal should be consulted directly. The ~~structure of~~order in which issues are described in this summary does not match exactly the ~~structure of~~order these issues are discuss in the actual proposal.

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A. Classification of Areas

Under the CAA, an ozone nonattainment area's classification determines the minimum measures that must be included in the area's SIP for meeting the 8-hour standard and the maximum time period allowed for the area to meet the standard. ~~The EPA is~~We are proposing two options for classifying areas.—

Under option 1, all areas would be classified under subpart 2 according to 8-hour ozone levels. As a result, all areas would be classified as marginal, moderate, serious, or severe or extreme (based on the most recent air quality data, no areas would fall in the "extreme" classification), and would be subject to control requirements specified in the Act for each classification.

Under Option 2, more than half the nonattainment areas would likely be regulated under subpart 1. All of these would be areas meeting the 1-hour ozone standard. The rest of the areas--those exceeding ~~or very close to exceeding~~, and a few that may be meeting the 1-hour standard--would be classified under subpart 2 in the same manner as option 1.

~~EPA~~We are also ~~is~~ proposing an "incentive feature" that would allow areas to qualify for a lower classification under subpart 2 than their air quality would dictate if they demonstrate they will attain by the earlier attainment date of ~~the~~a lower classification. For example, an area that would be classified "moderate" could qualify for a "marginal" classification by showing it will attain within 3 years of designation. The "incentive feature" is proposed for use in conjunction with either classification option.

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B. Attainment Deadlines

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~~EPA is~~We are proposing that for areas classified under subpart 2, the periods for attainment (running from the date of designation/classification) would be 3 years for marginal

areas, 6 years for moderate areas, 9 years for serious areas, and 15 years for severe-15 areas, and 17 years for severe-17 areas.

If classification option 2 were selected, some areas would be classified under subpart 1. Attainment dates for these areas would be no later than 5 years after designation, although they could be extended up to 10 years after designation depending on the severity of the area's air pollution and the availability and feasibility of pollution control measures.

For all areas, the Act requires each plan to be designed to meet the standard as expeditiously as practicable, regardless of the maximum statutory period specified for attainment.

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~~[NOTE: THE FOLLOWING 2 SECTIONS ARE BEING REDRAFTED (WILL LIKELY BE COMBINED INTO ONE SECTION)]~~

~~C. Transition from 1-hour to 8-Hour Ozone Standard~~

~~D. Anti-backsliding Provisions~~

~~E~~C. How will EPA implement the transition from the 1-hour to the 8-hour standard in a way to ensure continued momentum in States' efforts toward cleaner air?

This section discusses which obligations would remain in effect for areas that were designated nonattainment under the 1-hour ozone NAAQS on or after November 15, 1990, as areas begin to implement the 8-hour standard. It also proposes two alternatives for revoking the 1-hour ozone standard: revocation in whole and revocation in part.

a. Areas designated nonattainment under the 8-hour standard. We are proposing that all areas designated nonattainment for the 8-hour ozone NAAQS remain subject to certain obligations that applied by virtue of the area's classification for the 1-hour standard where the area's 1-hour classification was higher than the area's classification for the 8-hour standard. These obligations include, major source thresholds, inspection and maintenance programs and fuel programs. However, these obligations would not apply to portions of an 8-hour ozone nonattainment area that was not a part of a 1-hour ozone nonattainment area. We believe that Congress intended these requirements to continue to apply to areas as they move forward to address an ozone NAAQS. We are soliciting comment whether areas that have not yet met the attainment demonstration obligation for the 1-hour standard should remain obligated

to submit a 1-hour ozone attainment demonstration.

b. Areas designated attainment under the 8-hour standard. Since attainment areas are subject to PSD, not nonattainment NSR, we propose that these areas would be not remain subject to the nonattainment NSR offset and major source thresholds that applied due to their classification for the 1 hour standard. We are also proposing that control obligations that applied by virtue of the area's 1-hour classification would remain. We are proposing that these areas are obligated to submit a maintenance plan under section 110(a)(1). Consistent with EPA's "Clean Data Policy," we are proposing that these areas not be required to meet outstanding attainment demonstration and ROP requirements, so long as they remain in attainment. However, if the area violates the 8-hour standard and does not have an approved maintenance plan for the 8-hour standard under section 110(a)(1), those obligations will once again apply. We are proposing that these areas would need contingency measures in their section 110(a)(1) maintenance plans. However, unlike contingency measures under section 175A, these contingency measures need not include an obligation to implement all control obligations in the previously approved

SIP. For all areas designated attainment for the 8-hour ozone NAAQS the requirement to demonstrate conformity to the 1-hour standard would no longer apply once the 1-hour standard is revoked or determined not to apply for that purpose.

c. Concerning the NO_x SIP Call. We are proposing that States must continue to adhere to the emission budgets established by the NO_x SIP Call after the 1-hour standard is revoked in whole or in part. Similarly, we are not proposing to revoke or modify its section 126 regulation.

d. Obligations under part D of title I of the CAA that would not continue to apply. We are proposing that areas would not be obligated to continue to demonstrate conformity for the 1-hour standard once the 1-year grace period for application of conformity for the 8-hour standard has elapsed. We are also proposing that we would no longer make findings of failure to attain the 1-hour standard and, therefore, also would not reclassify areas to a higher classification for the 1-hour standard based on a failure to meet the 1-hour standard.

3. How long would the obligations discussed under the 1-hour standard last? We are proposing that these measures

would not expire. However, we are proposing two options for when the State may relegate these measures to contingency measures: Option 1. When the area achieves the level of the 1-hour ozone standard (even if the area has not yet attained the 8-hour standard). Option 2. When the area attains the 8-hour standard and is designated attainment (regardless of when, if ever, the area attains the 1-hour standard).

5. Mechanism to effect the transition from the 1-hour to the 8-hour standard. We are proposing 2 mechanisms. For both of these mechanisms, we are proposing that the revocation of the 1-hour standard would occur 1 year following designations for the 8-hour NAAQS. Option 1: Complete revocation of the 1-hour standard. Option 2: Partial revocation of 1-hour standard.

D. Mandatory Measures

~~The EPA~~We believe~~s~~ that the CAA is clear that once an area is classified under subpart 1 or subpart 2, the area's State implementation plan must contain the measures enumerated in the Act for its classification. However, today's proposal contains several features intended to provide States with flexibility on the measures included in

SIPs for 8-hour areas. In addition, ~~EPA is~~we are proposing to consider case-by-case waivers if the applicant can show, consistent with case law on this issue, that implementing a requirement in a particular area would cause "absurd results."

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~~F~~E. Consequences of Failure to Attain

The consequences of failure to attain the standard on time are specified by the Act. If an area classified under subpart 2 fails to meet the standard by its deadline, the Act requires that the area be bumped up to a higher classification and adopt a revised plan containing the additional measures specified by the Act for that classification. If an area classified under subpart 1 fails to meet the standard by its deadline, the area would be required to adopt a new plan demonstrating attainment, including any requirement mandated by the Administrator.

~~G~~F. Interstate Transport

~~EPA is taking comment on a proposed approach to~~We recognize that ozone and ozone precursors are often transported across State boundaries, and that interstate

transport can make it difficult - or impossible - for some States to meet their attainment deadlines solely by regulating sources within their own boundaries. To address this concern, the Agency recently adopted two rules (the NO_x SIP call rule and the section 126 rule) to reduce interstate ozone transport in the eastern U.S. The rules were developed based on the level of reductions needed to address transport for both the 1-hour and 8-hour standards. For both rules, the compliance date for achieving the required emission reductions is now May 31, 2004. Thus, unlike in the past, States affected by transport can develop their local implementation plans for the 8-hour ozone standard with the knowledge that the issue of interstate transport ~~of ozone pollution and its precursors. Under this approach, any further requirements would be imposed through a separate rule, not through the 8-hour ozone implementation rule. The EPA plans~~has already been addressed "up front."

The President recently proposed legislation known as the Clear Skies Act that, among other things, would further reduce regional transport of NO_x (one of the ozone precursors) beyond the levels of the NO_x SIP call. Although these reductions would make it easier for many nonattainment

areas to meet the 8-hour standard, the Agency has not completed an assessment of whether such reductions are warranted under the transport provisions of the Act. The Agency intends to investigate the extent, severity and sources of interstate ozone transport that will exist after the existing NO_x SIP call~~, which was issued in 1998, is implemented. If further remedial emission reductions are warranted, EPA would anticipate requiring these reductions in conjunction with a possible rule~~ rule is implemented in 2004. The Agency believes that any additional requirements for reducing the transport of ozone or ozone precursors should be considered along with the need to reduce interstate pollution transport that contributes to unhealthy levels of $PM_{2.5}$ in downwind areas. ~~The EPA believes that interstate transport should be addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know as they design their local attainment plans the extent to which air quality at the area's boundary will be improved.~~

~~H~~Under this approach, any effort to further reduce interstate ozone transport would be accomplished through legislation such as Clear Skies or through a separate

rulemaking, not through the 8-hour ozone implementation rule.

G. Modeling and Attainment Demonstration

An attainment demonstration SIP includes technical analyses to locate and regulate sources of emissions that are contributing to violations within nonattainment areas. Section 182(a) does not require marginal areas, which have an attainment date only 3 years following designation to perform any photochemical grid modeling. ~~The EPA is~~We are proposing to allow areas with attainment dates within 3 years after designation--regardless of whether they are covered under subpart 1 or 2--to rely on existing modeling. Areas with later attainment dates (more than 3 years after designation) would be required to do an attainment demonstration SIP. Modeling developed to support Federal or local controls may be used if the application of that modeling is consistent with ~~EPA's~~our modeling guidance.

~~F~~H. Reasonable Further Progress (RFP)

There are several issues related to the Act's RFP requirements.

1. Requirement for 15 percent VOC reductions for moderate and above areas during the first 6 years after the base

year.

~~EPA is~~We are proposing two ways to implement the 15 percent 2 requirements for moderate-and-above areas to meet numerical emissions reduction milestones (also known as rate-of-progress, or ROP, requirements).

Under the first option, all such areas would be required to reduce baseline VOC emissions by 15 percent over the first six years after a baseline year.

Under the second option, areas that previously reduced VOC emissions by 15 percent as part of implementing the 1-hour standard would be viewed as having already met the requirement. Moderate areas meeting this criterion would comply with the general subpart 1 requirement to demonstrate "reasonable further progress" toward meeting the standard. Serious-and-above areas meeting the criterion would be required to achieve an 18 percent reduction in VOC and/or ~~NOx~~NO_x over the first 6 years and 9 percent over subsequent three-year periods until the area's attainment date.

2. Base Year

~~The EPA is~~We are proposing 2002 as the baseline year, and that the six-year period for reductions would run from January 1, 2003 until December 31, 2008. ~~The EPA~~We proposes~~s~~

that States be allowed credit toward meeting the ROP requirements for all emission reductions that occur after the 2002 base year--including reductions from all post-1990 federal or other measures (except those specifically excluded under section 182(b)(1)) of the CAA. ~~The EPA~~We ha~~s~~ve also recently issued a memorandum that sets forth 2002 as the baseline year for planning purposes.

~~EPA~~We are also ~~is~~ proposing options for other RFP issues, including:

- The timing of ROP reductions relative to attainment date for moderate areas.
- Timing of submission of ROP plan.
- CAA requirements for creditability of control measures.
- Subpart 1 RFP.
- Cases where 8-hr NA area encompasses and is larger than current 1-hr NA area.
- ~~Use of RFP for addressing transport.~~

~~End Of Moved Text~~

~~J~~I. RACM/RACT

In the event classification option 2 is selected, ~~EPA is~~we are proposing an interpretation of the requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT) for areas covered by subpart 1.

For RACT, for areas with 8-hour ozone levels that would place them in a moderate or above classification under subpart 2, ~~EPA is~~we are proposing two options. Under the first option, these areas would be required to meet the traditional technology-based RACT control requirement that are applicable to moderate and above areas under subpart 2. Under the second option, if the area is able to demonstrate attainment of the standard as expeditiously as practicable with emission control measures in the SIP, then RACT will be met, and additional measures would not be required as being reasonably available.

For subpart 1 areas with 8-hour ozone levels that would place them in a marginal classification if classified under subpart 2, the RACT requirement would be similar to that for marginal areas covered under subpart 2. This RACT approach also would be available to areas that qualified for marginal status via the incentive feature.

~~EPA proposes~~We propose that the State does not need to perform a RACT analysis for sources subject to the State's emission cap-and-trade program where we have approved the cap-and-trade program as meeting the NO_x SIP Call requirements. In these cases, we propose that States may

choose to accept the NO_x SIP Call requirements as meeting the NO_x RACT requirements for the 8-hour standard and need not submit a new NO_x RACT SIP.

We propose to formally recognize ~~NOx~~NO_x, as well as VOC, as an ozone precursor, so that reasonably available control technology for ~~NOx~~NO_x would be required for areas classified under either subpart 1 or subpart 2 for the same kinds of sources covered under the 1-hour ozone standard.

The RACT requirements for areas under subpart 1 would have to be submitted within 2 years after an area's nonattainment designation.

For RACM, ~~EPA~~we proposes~~~~ to continue with the same interpretation that it has used for implementing the 1-hour ozone standard. To show that all RACM have been included in the plan, the State must show that there are no additional measures that are technically and economically feasible that will advance the attainment date.

~~K~~J. Conformity

No changes to the transportation conformity rule are proposed in this rulemaking. Transportation conformity is discussed in this notice for informational purposes. By statute, transportation conformity applies to 8-hour

nonattainment areas one year after the effective date of an area's designation. ~~The EPA's~~Our proposal to revoke the 1-hour standard one year after 8-hour ozone area designations means that transportation conformity requirements under the 1-hour standard would end at the same time 8-hour transportation conformity requirements begin. ~~The EPA is~~We are proposing that conformity would not apply in 1-hour ozone standard maintenance areas after ~~EPA~~we revoke~~s~~ the 1-hour ozone standard.

For the general conformity program, which ensures that federal actions will not interfere with an area's air quality plan, ~~EPA is~~we are not proposing to revise its General Conformity Regulations in this rulemaking. ~~The EPA~~We plan~~s~~ to retain the existing *de minimis* emissions levels for actions exempt from the rule. ~~The EPA's~~Our proposal to revoke the 1-hour standard one year after 8-hour ozone area designations means that general conformity requirements under the 1-hour standard would end at the same time 8-hour general conformity requirements begin. ~~The EPA is~~We are proposing that general conformity would not apply in 1-hour ozone standard maintenance areas after ~~EPA~~we revoke~~s~~ the 1-hour ozone standard.

~~L~~K. New Source Review

~~The EPA is~~We are proposing three options for NSR, which could be implemented in conjunction with each other:

- A "status quo" NSR program under which subpart 1 areas would be covered by subpart 1 NSR, while subpart 2 areas would be covered by subpart 2 NSR.
- A more flexible "Transitional" NSR program for areas that submit early SIPs and that attain early. This program would be available to areas covered under subpart 1 and that are attaining the 1-hour ozone standard.
- A "Clean Air Development Community" program that would allow a more flexible NSR program for areas that manage growth in emissions-producing activities.

VI. WHAT ARE EPA'S PROPOSED FRAMEWORKS FOR IMPLEMENTING THE 8-HOUR OZONE STANDARD?

As noted above, ~~EPA~~we originally intended to implement the 8-hour ozone standard under subpart 1 of part D, title I of the CAA. This would have allowed areas more flexibility to determine whether to regulate NO_x, VOC or both to address ozone nonattainment.

As also noted above, however, the Supreme Court determined that an approach that did not provide for classifying areas under subpart 2--and thus subjecting those areas to the subpart 2 control requirements--in implementing the 8-hour standard was unreasonable. In structuring a

proposed implementation rule, ~~EPA~~we ha~~s~~ve tried to stay as close as possible to the principles noted above, particularly with regard to seeking flexible ways for States to address their 8-hour ozone problems by avoiding measures that may be unreasonable for an area. ~~The EPA~~We ha~~s~~ve spent a large amount of time investigating possible legal theories and policy options to find flexibility within the statute, as interpreted by the Supreme Court. ~~The EPA~~We ha~~s~~ve also had the benefit of ideas and recommendations from many interested stakeholders, who also have spent much time developing their own theories and ideas. Based on these efforts, ~~EPA~~we believe~~s~~ that it has developed options for an implementation program that is workable under the constraints of the CAA. Nonetheless, ~~EPA~~we recognize~~s~~ that those constraints will still require a number of areas to adopt certain control measures that may not be as effective as others in achieving the 8-hour ozone standard. ~~The EPA is~~We are soliciting any further ideas for addressing this situation.

To describe ~~EPA's~~our proposed frameworks for implementing the 8-hour ozone standard, it is necessary to examine all the components or elements of the process used

to implement the standard. Therefore, the issues and options that ~~EPA is~~we are proposing that deal with the aspects of preparing SIPs for the standard are presented below individually. Following that, ~~EPA~~we presents two possible alternative frameworks that blend one or more options from each of the elements to illustrate how they may work in conjunction with each other. ~~The EPA is~~We are soliciting comment on the options presented for the individual elements, and also on how the options can be grouped into a consolidated implementation framework.

The proposal below describes only those options or approaches ~~EPA is~~we are proposing. ~~The EPA~~We considered a number of other options and approaches for the elements discussed below. These other options that were considered but are not being proposed are described in a separate document available in the docket.[10]

A. How will EPA reconcile subparts 1 and 2? How will EPA classify nonattainment areas for the 8-hour standard? What

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[10]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~January~~March 2003.

attainment dates would apply?

1. Statutory framework and Supreme Court decision

The CAA contains two sets of requirements--subpart 1 and subpart 2--that establish requirements for State plans implementing the national ozone air quality standards in nonattainment areas. (Both are found in title I, part D.) Subpart 1 contains general requirements for SIPs for nonattainment areas for any pollutant--including ozone--governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment SIPs.

Throughout this proposed rulemaking, ~~EPA~~we repeatedly discus~~s~~es whether an area is subject to the planning requirements of subpart 1 or subpart 2. This language is convenient shorthand for purposes of this proposal. Actually, if an area is subject to subpart 2 requirements, it is also subject to subpart 1 requirements. In some cases, subpart 1 and subpart 2 requirements are inconsistent or overlap. To the extent that subpart 2 addresses a specific planning obligation, the provisions in subpart 2 control. For example, under section 182(b), moderate areas are subject to 15 percent rate-of-progress requirements rather than the more general reasonable further progress

requirements of section 172(c)(2). However, moderate areas remain subject to the contingency measure requirement of section 172(c)(9), as that requirement is not addressed for moderate areas in subpart 2.[11]

When ~~EPA~~we published the 8-hour ozone standard on July 18, 1997, ~~EPA~~we indicated ~~it~~that we anticipated that States would implement that standard under the less prescriptive subpart 1 requirements. More specifically, ~~EPA~~we provided that areas designated nonattainment for the 1-hour ozone standard would remain subject to the subpart 2 planning requirements for purposes of the 1-hour standard until such time as they met that standard. But those areas and all other areas would only be subject to subpart 1 for purposes of planning for the 8-hour ozone standard.

As noted above, in February 2001, the Supreme Court ruled that the statute was ambiguous as to the relationship of subparts 1 and 2 for purposes of implementing the 8-hour NAAQS. However, the Court also ruled that ~~EPA's~~our implementation approach, which provided no role for subpart

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[11]"State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule." April 16, 1992 (57 FR 13498 at 13501 and 13510).

2 in implementing the 8-hour NAAQS, was unreasonable. Id. Specifically, with respect to classifying areas, the Supreme Court stated:

> [D]oes subpart 2 provide for classifying nonattainment ozone areas under the revised standard? It unquestionably does.

Whitman, 121 S.Ct. at 917.

However, despite recognizing that subpart 2 does provide classifications applicable for the 8-hour standard, the Supreme Court also recognized that the subpart 2 classification scheme, specified in section 181, did not entirely fit with the revised 8-hour standard and left it to EPA to develop a reasonable resolution of the roles of subparts 1 and 2 in implementing a revised ozone standard. Id. at 482-486.

In particular, the Court noted three portions of section 181 - the classification provision in subpart 2 - that it indicated were "ill-fitted to implementation of the revised standard."

- First, the Court recognized that 1-hour design values used for establishing the classifications in Table 1 in section 181 "would produce at best an inexact estimate of the new 8-hour averages . . ." 121 S.Ct. at 918.
- Second, the Court recognized that the design values in

Table 1 start at the level of the 1-hour NAAQS - 0.12 ppm. The Court noted that "to the extent the new ozone standard is stricter than the old one, . . . the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard (and thus nonattaining) but less than the approximation of the old standard codified by Table 1." Id.

- Third, the Court recognized that "Subpart 2's method for calculating attainment dates - which is simply to count forward a certain number of years from November 15, 1990 . . . seems to make no sense for areas that are first classified under a new standard after November 15, 1990." More specifically, the Court recognized that attainment dates for marginal (1993), moderate (1996), and serious (1999) areas had passed. Id. at 483-484.

2. EPA's development of options

In light of the Supreme Court's ruling, ~~EPA~~we examined the statute to determine the manner in which the subpart 2 classifications should apply for purposes of the 8-hour ozone NAAQS. In particular, ~~EPA~~we paid particular attention to the three portions of section 181 that the Supreme Court noted were ill-fitted for implementation of the revised 8-hour standard. ~~The EPA~~We examined those provisions in light of the legislative history and the overall structure of the CAA to determine what Congress intended for purposes of implementing a revised, more stringent ozone standard. At the same time, ~~EPA~~we did not view the ambiguity created by the statute to provide ~~EPA~~us with carte blanche authority to

re-write the statute. Rather, ~~EPA~~we believe~~s~~ that it needs to take a narrow reading consistent with what it believes Congress intended. Consistent with those principles, ~~EPA~~we developed several options.

3. Options for classification

~~The EPA is~~We are proposing two options for comment. ~~The EPA~~We prefer~~s~~ classification Option 2 because it provides more flexibility to States and Tribes as they address their unique air quality problems. This is likely to allow some areas to attain the standard at a lower cost. However, ~~EPA is~~we are also soliciting comments on Option 1, in part, because it is less complex and may be easier to communicate, in addition to any other ideas on how to classify nonattainment areas.

a. Option 1. Under the first option, ~~EPA~~we would classify 8-hour ozone nonattainment areas according to the severity of their ozone pollution based on 8-hour ozone levels.

Under this option, all 8-hour nonattainment areas would be classified under subpart 2 as marginal, moderate, serious, severe-15, severe-17, or extreme. The CAA gives areas in higher classifications -- which are those with more serious ozone pollution problems -- longer time periods for

attaining the standard, but also requires these areas to meet a longer list of requirements than areas in lower classifications.

A key feature of this option is the use of 8-hour ozone design values in determining the severity of an area's 8-hour ozone problem. However, the subpart 2 classification table (Table 1 of CAA section 181) is based on 1-hour ozone design values (because it was designed for implementation of the standard in effect in 1990--the 1-hour ozone standard). Therefore, this option would require ~~EPA~~us to adapt the subpart 2 classification scheme. Specifically, ~~EPA~~we would adopt by regulation a modified version of the subpart 2 classification table that contains 8-hour design value thresholds for each classification, rather than the statutory 1-hour ozone design value thresholds. Using 8-hour design values for classifying areas for the 8-hour standard would reflect the magnitude of the 8-hour ozone problem more accurately than would the 1-hour design values in Table 1.

~~The EPA is~~We are proposing to translate the classification thresholds in Table 1 of section 181 from 1-hour values to 8-hour values in the following manner:

Determine the percentage by which each classification threshold in Table 1 of section 181 exceeds the 1-hour ozone standard and set the 8-hour threshold value at the same percentage above the 8-hour ozone standard. For example, the threshold separating marginal and moderate areas in Table 1 is 15 percent above the 1-hour standard, so ~~EPA~~we would set the 8-hour moderate area lower threshold value at 15 percent above the 8-hour standard.

An examination of the percentages derived indicated that Congress set the classification thresholds at certain percentages or fractions above the level of the standard.[12] These are the percentages above the standard that we used and applied to the level of the 8-hour standard to yield new threshold levels for the 8-hour standard. Table 2 of this proposed rulemaking below depicts how the translation would be done and the results.

There are other ways of performing the translation as

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[12]The upper thresholds of the marginal, moderate, serious, severe-15, and severe-17 classifications are precise percentages or fractions above the level of the standard, namely 15.000 percent (3/20ths more than the standard), 33.333 percent (one-third more than the standard), 50.000 percent (one-half more than the standard), 58.333 percent (7/12ths more than the standard) and 133.333 percent (one and one-third more than the standard).

described further below, some of which have been suggested in public comment, but ~~EPA~~we believe~~s~~ that the translation described here is most consistent with the apparent intent of Congress in establishing the thresholds in the classification system in section 181.

TABLE 2
TABLE 1 OF SUBPART 2 1-HOUR OZONE CLASSIFICATION TABLE
TRANSLATION TO 8-HOUR DESIGN VALUES

Area class		CAA design value thresholds 1-hour ozone ppm	% above 1-hour ozone NAAQS	Translated 8-hour design value thresholds ppm ozone
Marginal	from	0.121	0.833	0.085*
	up to	0.138	15.000	0.092
Moderate	from	0.138	15.000	0.092
	up to	0.160	33.333	0.107
Serious	from	0.160	33.333	0.107
	up to	0.180	50.000	0.120
Severe-15	from	0.180	50.000	0.120
	up to	0.190	58.333	0.127
Severe-17	from	0.190	58.333	0.127
	up to	0.280	133.333	0.187
Extreme	equal to or above	0.280	133.333	0.187

* The percentages used were calculated based on the level of the 1-hour standard as it appears in 40 CFR 51.9, viz., 0.12 ppm. The percentages were applied to the 8-hour standard as it appears in 40 CFR 51.10, viz., 0.08 ppm. ~~The EPA~~Our guidance uses a rounding convention for 1-hour air quality data such that values less than 0.125 round down to 0.12 and therefore represent attainment; values of 0.125 up to and including 0.129 round up to 0.13, and therefore indicate nonattainment. An exact translation of the 0.121 1-hour threshold would have produced 0.081 ppm as the corresponding 8-hour threshold; however, since any value less than 0.085 ppm would indicate an area is attaining the 8-hour ozone standard, the table's lowest value reflects the lowest value representing nonattainment, viz., 0.085 ppm.

As mentioned above, under this option all 8-hour nonattainment areas would be classified under subpart 2 and receive attainment dates consistent with their classification. Elsewhere in this proposed rule, ~~EPA~~we discusses~~~~ how it would interpret the attainment dates in Table 1 of section 181 for purposes of areas classified under subpart 2 for the 8-hour standard. Areas that do not attain by their attainment date would be reclassified to a higher classification and be given a later attainment date and would be subject to the measures of the higher classification (section 181(b)(2)).

b. Option 2--2-step approach. ~~The EPA is~~We are proposing a second option (~~EPA's~~our preferred option) under which some areas would implement the 8-hour standard under subpart 1, and other areas would implement the 8-hour standard under subpart 2. This option relies on language in the Supreme Court decision, which is described in detail below.

In brief, the option that ~~EPA is~~we are proposing would work as follows:

- First, ~~EPA~~we would determine which 8-hour areas must be classified under subpart 2. These would be areas with ozone levels that exceed the 1-hour ozone design values that Congress specified in Table 1 of section 181. For the remaining areas, ~~EPA~~we would have discretion to place them under subpart 1 or subpart 2.
- Second, ~~EPA~~we would classify all areas. Subpart 2

areas would be classified in the same manner described above under option 1. Options for classifying subpart 1 areas are described below.

(i) Legal framework for 2-step approach. Under this approach, ~~EPA~~we first determine~~s~~ the universe of areas that must be subject to the provisions of subpart 2 and the universe of areas that fall into a "gap" in subpart 2's classification scheme. Then, ~~EPA~~we proceed~~s~~ to determine how to classify the areas.

(ii) Legal Framework--Step 1--Which subpart applies for an area? With respect to the first step, the Supreme Court noted that "to the extent that the new ozone standard is stricter than the old one, . . . the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard . . . but less than the approximation of the old standard codified by Table 1 [in section 181(a)]." 121 S.Ct. at 918. Thus, for those areas with a 1-hour ozone design value above the level identified in Table 1 (i.e., 0.121 ppm), Table 1 "specifies" a classification for the area. For those areas, ~~EPA~~we would not have authority to establish classifications under subpart 1 because section 172(a)(1)(C) prohibits the use of the classification

authority in section 172(a)(1)(A) for those areas.[13] However, for areas with 1-hour ozone design values below 0.121 ppm, Table 1 does not specify a classification, and those areas fall into a gap in the statute. Thus, ~~EPA~~we must reasonably determine whether such areas should be subject to the planning obligations of subpart 1 or subpart 2. This issue is discussed more fully below under ~~"Proposed Option~~"Rationale for ~~'Gap'~~ Aregulating all "Gap" areas under subpart 1 only."—

In summary, under the first step of this approach, ~~EPA~~we examines each nonattainment area's most recent 1-hour design value at the time of designation under the 8-hour NAAQS to determine whether the area must be subject to the classification under subpart 2. If an area's 1-hour design value is 0.121 or higher, then it must be subject to a subpart 2 classification. If its 1-hour design value is lower than 0.121, it falls into a gap and ~~EPA~~we must determine a reasonable implementation scheme - either

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[13]Section 172(a)(1)(C) provides that the provisions of section 172(a) "shall not apply with respect to nonattainment areas for which classifications are specifically provided" in other sections of part D. Similarly, section 172(a)(2)(D) provides that the attainment date provisions in section 172(a)(2) do not apply "to nonattainment areas for which attainment dates are specifically provided" elsewhere in part D.

subpart 1 or subpart 2 - for such area.

(iii) Legal framework--Step 2--How should areas be classified under subparts 1 and 2? Under step 2 of this approach, ~~EPA~~we must determine how to classify areas subject to the classification provisions of subpart 2. For those areas subject to the classification provisions of subpart 2, ~~EPA~~we believe~~s~~ that it is most reasonable to use the area's 8-hour design value to determine the appropriate classification. This would be done in the same manner as option 1, proposed above, in which the Table 1 threshold design values are converted from 1-hour values to 8-hour values.

Another option would have been to apply Table 1 as it is written. Some might argue that this approach is better because it is consistent with the ~~factor~~design value EPA would use under this option to determine whether Congress mandated that the area be subject to subpart 2. ~~The EPA~~We do~~es~~ not believe that Congress would have intended the use of 1-hour design values for determining the classification - and therefore the control obligations and attainment dates - of 8-hour areas. While ~~EPA~~we believe~~s~~ it is reasonable to use the 1-hour design values as a barometer of Congress' intent as to which areas should be subject to the more

prescriptive requirements of subpart 2, ~~EPA~~we ~~does~~ not believe it makes sense to use the 1-hour values to establish each area's classification under that subpart. The area's classification identifies the specific control requirements applicable to each area within that classification and the period of time the area has to attain. As enacted, the Table provides that areas having a more significant ozone pollution problem for the 1-hour standard and thus a higher classification are subject to more stringent controls and have a longer period to attain. Because of the different form and averaging times of the 1-hour and 8-hour standards, areas with significant 1-hour problems may not have as significant an 8-hour problem and vice versa. Using the 1-hour design values to classify areas, therefore, could result in areas with less significant ozone problems being subject to stricter planning obligations (and later attainment dates) than those with a more significant problem. Thus, ~~EPA~~we believe~~s~~ it is more consistent with Congressional intent to use 8-hour design values as the means for specifying the stringency of controls needed to attain the 8-hour ozone standard and the associated attainment dates. ~~The EPA~~We also believe~~s~~ that this is consistent with the Supreme Court decision, in which the

Court recognized that the "1-hour averages" in Table 1 "produce at best an inexact estimate of the new 8-hour averages." See 121 S.Ct. at 918.

As discussed in the following section, for areas that EPA determines would be subject only to subpart 1, section 172(a)(1)(A) grants EPA discretion to develop a classification scheme.

4. Under classification option 2, how would EPA classify subpart 1 areas?

a. Background. As noted above, classification option 2 above could result in a number of areas not being classified under subpart 2. Section 172(a)(1)(A) grants EPA discretion to establish a classification system for areas covered under subpart 1 but does not mandate classifications. Section 172(a)(1)(A) provides that

> on or after [the date of designation], the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

Prior to the Supreme Court's remand of ~~EPA's~~our implementation approach, ~~EPA~~we had proposed that all 8-hour

ozone nonattainment areas be subject only to subpart 1 for purposes of the 8-hour standard, and that areas would be classified as traditional, transitional, or international transport. These classifications were described in ~~EPA's~~our November 17, 1998 draft implementation guidance.[14]

Because ~~EPA is~~we are no longer considering an option where all areas would be classified under subpart 1, ~~EPA~~we ha~~s~~ve determined the classification scheme it proposed earlier is not appropriate. ~~The EPA is~~We are now proposing, as described below, two new options for classifying subpart 1 areas for the 8-hour standard.

b. Options for classifying subpart 1 areas

(i) Option 1--no classifications. Under this option, subpart 1 areas would not have different classifications. When submitting an attainment demonstration, each area would need to establish an attainment date consistent with section 172(a)(2)(A), i.e., demonstrating attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the

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[14]Proposed Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and the Regional Haze Program. November 17, 1998. Found at: http://www.epa.gov/ttn/oarpg/t1pgm.html

severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

(ii) Option 2--create an overwhelming interstate transport classification. This option could be implemented in addition to Option 1 (no classifications) for areas that qualify; in other words, we would not classify areas that do not qualify for this transport classification. Under this option, an area could be classified as a "Transport Area" upon submission of a SIP that demonstrates, using modeling, that the nonattainment problem in the area is due to "overwhelming transport" emissions.

~~The EPA is~~We are proposing that for subpart 1 areas to qualify for an overwhelming transport classification, the area would have to meet the same criteria as specified for rural transport areas under section 182(h) (of subpart 2). This section restricts treatment as a rural transport area to an areas that does not include, and is not adjacent to, any part of a Metropolitan Statistical Areas or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census). The area may be treated as a rural transport area if ~~EPA~~we find~~s~~ that sources o~~r~~f VOC (and, where ~~EPA~~we determines relevant~~)~~,

NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.[15] Since this classification would only apply to subpart 1 areas, areas classified under subpart 2 would not qualify for this classification.

The following are features of this option:

- The area would be treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements.
- Less restrictive NSR and conformity requirements could be proposed for the area. If ~~EPA~~we includ~~es~~ the transport classification option in the final implementation rule, ~~EPA~~we would consider proposing a separate rulemaking on the details of NSR and conformity requirements~~, likely consistent with the approach we would adopt for implementation of the $PM_{2.5}$ NAAQS~~.
- The area would receive an attainment date that is consistent with section 172(a)(2)(A), but that takes into consideration the following:
  - The attainment date of upwind nonattainment areas that contribute to the downwind area's problem; and
  - The implementation schedule for upwind area controls, regardless of their geographic scope (e.g., national, regional, statewide, local).

This option would partially address Tribal concerns

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[15]The EPA's guidance on such determinations appears in "Criteria for Assessing the Role of Transport of Ozone/Precursors in Ozone Nonattainment Areas," May 1991. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Technical Support Division, Research Triangle Park, NC 27711. Available at: http://www.epa.gov/scram001/tt25.htm. Look for zip file name UAMIVGUIDE. Unzip to access file name UAMCRIT.

about designations where a Tribal area designated nonattainment does not contribute significantly to its own problem. This is one of the key issues for the Tribes who seek to have economic growth from new sources within their jurisdiction but that have difficulty obtaining emission reduction offsets from sources located either inside or outside Tribal areas.

Interstate, intrastate, and international transport are also discussed elsewhere in this proposed rulemaking.

5. Rationale for regulating all "Gap" areas under subpart 1 only.

This section is aimed solely at providing a rationale for why all gap areas should be placed under the subpart 1 regulatory framework rather than the subpart 2 regulatory framework. Issues regarding what specific requirements should apply to subpart 1 areas are addressed in later sections of this preamble.

In developing classification option 2, ~~the EPA~~we explored a number of options regarding how to interpret the relationship of subpart 1 and subpart 2 for areas with 1-hour design values less than 0.121. These areas are referred to below as "gap" areas because their 1-hour design value falls below the lowest value in the subpart 2

classification table and thus Congress did not dictate whether subpart 2 or subpart 1 applies. The options ~~EPA~~we explored ranged from placing all of these areas into the subpart 2 classification scheme to placing none of these areas into the subpart 2 classification scheme. ~~The EPA is~~We are proposing the latter approach--that all areas that fall into the gap should be subject only to the planning obligations of subpart 1. When faced with a similar issue following enactment of the CAA Amendments of 1990, ~~EPA~~we determined that areas that Congress did not mandate fall into the classification scheme of subpart 2 should be subject to only the planning obligations of subpart 1.[16]

For classification option 2, ~~the EPA~~we believe~~s~~ it is appropriate to continue that interpretation of the CAA for 8-hour ozone areas, despite the fact that a significant

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[16]These areas included: (a) the transitional areas under section 185A (areas that were designated as an ozone nonattainment area as of the date of enactment of the CAA Amendments of 1990 but that did not violate the 1-hour ozone NAAQS between January 1, 1987, and December 31, 1989); (b) nonattainment areas that had incomplete (or no) recent attaining data and therefore could not be designated attainment; and (c) areas that were violating the 1-hour ozone standard by virtue of their expected number of exceedances, but whose design values were lower than the threshold for which an area can be classified under Table 1 of subpart 2 (submarginal areas). See 57 FR 13498 at 13524 col. 3 et seq. (April 16, 1992).

number of areas designated nonattainment for the 8-hour NAAQS will fall into this group. Congress enacted subpart 2 with the understanding that all areas (except marginal areas, for which no new controls were required) would have to employ additional local controls to meet the 1-hour ozone standard in a timely fashion. Since then, many control measures have been implemented, our understanding of the importance of interstate pollution transport has improved, and ~~EPA~~we ha~~s~~ve promulgated interstate NO_x transport rules. Regional modeling by EPA indicates that the majority of potential 8-hour nonattainment areas that fall into the gap will attain the 8-hour standard by 2007 based on reductions from the NO_x SIP call, the federal motor vehicle emissions control program, and other existing Federal and State control measures, without further local controls.

Of the 76 hypothetical areas that would fall into the gap (and would thus be covered under subpart 1 under classification option 2), 27 would have been classified as moderate if classified under option 1 under ~~subpart 2 by~~based on their 8-hour design values. Eighteen of these 27 areas are projected to attain by 2007 through existing regional or national measures. If these areas were to be classified as moderate (under classification option 1),

these areas would nonetheless be required to implement statutorily specified controls for moderate areas. Using our discretion to regulate gap areas under subpart 1 is one way (the proposed incentive feature, discussed below in this section on classifications, is another way) to avoid requiring unnecessary new local controls in areas already projected to meet the standard in the near term.

The other 49 gap areas could be regulated either under subpart 1 (under option 2) or as marginal areas if classified by 8-hour design value under subpart 2 (under option 1). These areas already are meeting the 1-hour standard and are close to meeting the 8-hour standard. Because control requirements for marginal areas are similar to those for subpart 1 areas, and because most of these areas are projected to attain within 3 years, the difference in regulatory category may make no practical difference for many of these areas. A potential rationale for placing these areas under subpart 1 is to provide States and EPA with greater discretion to handle implementation difficulties that might arise in some of these areas. For example, a gap area might fail to attain within the maximum attainment date for marginal areas (3 years after designation) because of pollution transport from an upwind

nonattainment area with a later attainment deadline. In that event, subpart 2 calls for the area to be reclassified as moderate and for the area to implement additional local controls specified for moderate areas. For areas under subpart 1, however, ~~EPA~~we could provide additional time for the area to attain while the upwind sources implemented required controls if this were determined to be a more effective or more appropriate solution. Although regional modeling projections indicate that the NO_x SIP call will bring most gap areas into attainment by 2007, some States have voiced concern to ~~EPA~~us that interstate or intrastate pollution transport may affect future 8-hour areas with near-term attainment deadlines. Subpart 1 would provide States and EPA with more flexibility on the remedy in any such cases.

Although ~~EPA~~we believe~~s~~ that there are reasons to place gap areas in subpart 1, and has the legal authority to do so, we are not suggesting that subpart 2 is unreasonable for any area that would be subject to subpart 2 under either classification option. Also, ~~EPA's~~our analysis here should not be taken as inconsistent with its proposal under Classification Option 1, whereby all 8-hour ozone nonattainment areas would be subject to the subpart 2

planning obligations. That simpler option, in conjunction with the incentive feature for classifications (if ultimately adopted), described ~~elsewhere~~below in this ~~proposal~~section on classification, could provide similar flexibility on control measures for most (though not quite all) areas. In addition, ~~the EPA is~~we are proposing ways in which to build some flexibility into some of the mandated VOC control obligations in subpart 2, in areas where it would make sense to provide such flexibility. A final observation is that Congress did recognize some benefit in prescribing measures for areas because of past failure to attain under less prescriptive provisions of the CAA.

Placing all gap areas in subpart 1 would result in over half of the hypothetical nonattainment areas being covered by subpart 1. To be fair, this option might appear to result in some areas being placed in subpart 1 even though they have 8-hour ozone design values as high or higher than some areas that fall under Table 1 in section 181 and thus are covered under subpart 2. As explained above, ~~EPA~~we believe~~s~~ the most effective way to deal with that issue is not to exercise its discretion and make those areas subject to subpart 2. Rather, ~~EPA~~we can use ~~its~~our discretion under subpart 1 to determine how to define the controls required

under subpart 1 for such areas in order to assure the most equitable, yet effective, means for these areas to attain the 8-hour ozone NAAQS. For example, in the section of this proposed rulemaking addressing reasonable further progress (RFP) under subpart 1, ~~EPA~~we explore~~s~~ an option of defining RFP in the same manner as it is defined under subpart 2. The EPA is open to suggestions as to how to make the subpart 1 planning process that would apply to these areas effective and also equitable in light of the subpart 2 planning obligations to which areas with a similar 8-hour ozone problem may be subject.

6. Proposed incentive feature

In addition to the two basic classification options being proposed above, ~~EPA is~~we are also proposing an early attainment incentive feature that could be applicable to either of the options proposed above. Under this feature, for areas classified under subpart 2, ~~EPA~~we would classify an area at a lower classification than it would receive based on its design value, if a modeled demonstration indicates the area will attain by an attainment date that is consistent with the lower classification. For instance, if a subpart 2 area has an 8-hour ozone design value of 0.094 ppm, it would ordinarily be classified as moderate, with an

attainment date 6 years after the area's designation as nonattainment for the 8-hour standard. If modeling acceptable to EPA demonstrates that this area will attain within 3 years after designation, the area would be eligible for classification as a marginal area, since marginal areas would have a maximum attainment date of 3 years after their nonattainment designation date. (See ~~EPA's~~our proposal on attainment dates elsewhere in this proposed rulemaking.)—

The lower classification would provide additional flexibility to the area in that it would avoid the mandatory control requirements of the higher classification. Appendix A of this proposal provides a comparison of requirements under subparts 1 and 2.

In granting a lower classification to an 8-hour ozone nonattainment area based on this option, ~~EPA~~we proposes to take into account the extent to which the area significantly contributes to downwind nonattainment or interferes with maintenance under section 110(a)(2)(D) of the Act. ~~The~~ ~~EPA~~We solicits comment on possible mechanisms for assessing this contribution for purposes of granting the lower classification, and possible tests for whether to grant or deny the lower classification.

In addition to soliciting comment on this proposed incentive feature itself, ~~EPA is~~we are soliciting comment on whether such modeled demonstration would have to be made prior to the initial classification of areas, or whether it could be submitted after ~~EPA~~we ha~~s~~ve already classified the area initially at the higher classification, in which case ~~EPA~~we would have to revise the classification downward at a subsequent time.

~~The EPA~~We also solicit~~s~~ comment on whether EPA, prior to initial classifications, should use EPA regional-scale modeling (rather than urban-scale modeling) to make determinations of which areas would receive a lower classification. Under this suboption, an area would qualify for the lower classification if EPA's regional modeling indicated that, based on emissions reductions from existing national and regional programs, the area would attain the 8-hour standard by the attainment deadline for the next lower classification. In requesting comment on this suboption, EPA notes that regional-scale modeling alone is not considered sufficient for an approvable attainment demonstration. ~~The EPA~~We requests comment on whether regional-scale modeling would nonetheless be adequate for purposes of lowering an area's classification. (Under this

approach, if regional modeling did not provide grounds for the lower classification, States would need to perform local attainment demonstrations to take advantage of the incentive feature.)

It should be noted that an option was presented and discussed at the public meetings similar to this incentive feature in conjunction with the option that would have classified all areas based on their 8-hour design values but also relied on modeled results to adjust the classification. The option received criticism from a wide variety of commenters, who argued that modeling could be applied inappropriately in classifying areas. ~~The EPA~~We nonetheless believe~~s~~ it is appropriate to propose this feature to alleviate some of the other concerns that many commenters raised about the mandatory measures required under the higher classifications of subpart 2. Furthermore, ~~EPA~~we believe~~s~~ this option is justified by the intent of the CAA, in which an area's classification is generally linked to the amount of time the area is anticipated to need to attain the NAAQS. ~~The EPA~~We recognize~~s~~ that the CAA was not originally structured to allow lower classifications based on an area being projected to attain earlier. However, under the Supreme Court ruling that required that ~~EPA~~we interpret the

law regarding subpart 2's application to the 8-hour ozone standard, ~~EPA~~we believe~~s~~ it may reasonably give areas that are projected to attain the 8-hour ozone standard by an earlier date a classification that is consistent with that attainment date.

TABLE 3
PROPOSED CLASSIFICATION OPTIONS
COUNTS OF HYPOTHETICAL NONATTAINMENT AREAS

	Subpart 2						Subpart 1	
	Extreme	Severe-17	Severe-15	Serious	Moderate	Marginal		Total
Option 1 (8-hour DV)	0	1	1	6	53	61	0	122
Option 1 (8-hour DV)-with incentive feature*	0	1	1	6	30	84	0	122
Option 2 (2-step approach--areas < 0.121 ppm = subpart 1)	0	1	1	6	26	12	76	122
Option 2 (2-step approach--areas < 0.121 ppm = subpart 1)-with incentive feature*	0	1	1	6	21	17	76	122

*Areas that would be moderate using their 8-hour design value but that are projected to attain by 2007 would be classified marginal.

7. Other options EPA considered

~~The EPA~~We considered many other options for classification and for the translation of the classification table in the CAA. These options are discussed in a separate document available in the docket.[17] These other possible ways of translating the classification table, in ~~EPA's~~our opinion, do not have the same degree of consonance with the intent of Congress when it enacted subpart 2 as those ~~EPA is~~we are proposing. ~~The EPA is~~We are therefore not proposing these. However, ~~EPA~~we will accept comments on the merits of them and if there is sufficient interest in any of these options, such that EPA believes they should be considered as an implementation option, ~~EPA~~we will consider publishing a supplemental proposal.

8. Implications for the options

To evaluate the potential impact of the various classification options, ~~EPA~~we developed a set of 122 hypothetical nonattainment areas based on the counties that have monitors measuring violations of the 8-hour ozone

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[17]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. January 2003.

standard for the 3-year period of 1998-2000. ~~It should be noted that EPA's~~Our inclusion and grouping of counties into hypothetical nonattainment areas was done only for illustrative purposes and does not have any implications for the location, number or boundaries of nonattainment areas that may ultimately be evaluated and recommended by States and Tribes or designated by EPA. The final designations would be affected by factors contained in EPA's guidance on boundaries of nonattainment areas (which is, as noted earlier, not a topic of discussion or comment for this notice of proposed rulemaking). As noted earlier, Table 3 above illustrates a possible classification grouping of nonattainment areas based on counties with monitors based on the options proposed above.

The list of these areas and the information we used in assessing the conseguences of our proposal are available in the docket.[18]

9. Other considerations

In addition to the overall classification options being

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[18]Hypothetical Nonattainment Areas under the 8-hour Ozone National Ambient Air Quality Standard. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, March 2003. Available at: http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/.

proposed, it should be noted that subpart 2 also provides that classifications may be adjusted upward or downward for an area if the area's design value is within 5 percent of another classification. This provision (section 181(a)(4)) reads:—

> If an area classified under [Table 1] would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, . . . adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

Thus, for example, if a downwind area is subjected to a subpart 2 classification and there is evidence that the area will not benefit significantly from local controls mandated by subpart 2 for the area's classification and can attain

within the time period specified for the next lower classification, the area may obtain some relief based on the 5 percent rule in the CAA, if applicable.

This provision does not establish a mechanism for removing areas from the subpart 2 classification scheme.

B. How will EPA treat attainment dates for the 8-hour ozone standard?

1. Background

Under subpart 2 of the CAA, maximum attainment dates are fixed as a function of a nonattainment area's classification under Table 1. The CAA provides that an area's attainment date must be "as expeditious as practicable but no later than" the date prescribed in Table 1 for that area's classification. The statutory dates are specified as a number of years (e.g., 6 years) from the date of enactment of the CAA Amendments, which was November 15, 1990. Because these dates are a set number of years after enactment of the CAA Amendments, one might initially conclude that the subpart 2 classifications, with their associated attainment dates, should not apply for the 8-hour standard. The Supreme Court, however, rejected a conclusion that the subpart 2 classifications do not apply, although it noted that the attainment dates "seem[ ] to make no sense"

for areas classified under a new standard after November 15, 1990. 121 S.Ct. at 918.

~~EPA~~We believe~~s~~ that applying the attainment dates as expressly provided under Table 1 would produce absurd results. For example, a strict application of Table 1 would result in areas classified as marginal for the 8-hour NAAQS as having an attainment date of November 15, 1993 and areas classified as moderate as having an attainment date of November 15, 1996. Since these dates have long passed, it makes no sense to establish them as the applicable dates.

Many provisions of the CAA, however, indicate what Congress' intent was in setting attainment dates. For example, section 181(b), provides that for areas designated attainment or unclassifiable for ozone immediately following enactment of the 1990 CAA Amendments and subsequently redesignated to nonattainment, the attainment date would run from the date the area is classified under subpart 2.[19] Thus, if an area designated as attainment for the 1-hour

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[19]Section 181(b) provides that "any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of the enactment of the CAAA of 1990 and the date the area is classified under this paragraph." Under section 181(b), the date of classification is the same as the date of redesignation to nonattainment.

ozone standard in 1990 were redesignated to nonattainment for the 1-hour ozone standard in January 2002 and classified as moderate, the area's attainment date would be 6 years following January 2002, i.e., January 2008. Similarly, section 172(a)(2) provides for attainment dates to be calculated from the time the area is designated nonattainment. ~~The EPA~~We believe~~s~~ that Congress would have intended for areas designated nonattainment and classified under subpart 2 for the 8-hour standard to have attainment periods consistent with those in Table 1 (e.g., 3 years for a marginal area, 6 years for a moderate area etc.), but running from the date the area is designated and classified for purposes of the 8-hour NAAQS. ~~Thus, EPA is~~We are proposing for areas classified under subpart 2, the period for attainment (running from date of designation/classification) would be:

- marginal - 3 years
- moderate - 6 years
- serious - 9 years
- severe - 15 or 17 years
- extreme - 20 years (no areas currently expected to be in this category for the 8-hour ozone standard).

Note that the CAA requires each area to demonstrate attainment as expeditiously as practicable, regardless of maximum statutory periods.

For areas classified under subpart 1, attainment dates would be set under section 172(a)(2)(A), which provides that the SIP must demonstrate attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

2. How will EPA address the provision regarding 1-year extensions?

Both subpart 1 and subpart 2 provide for two brief attainment date extensions for areas in limited circumstances where they do not attain by their attainment date. Section 172(a)(2)(C) (under subpart 1) provides for EPA to extend the attainment date for 1 year if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and no more than a minimal number of exceedances of the relevant NAAQS has occurred in the area in the attainment year. No more than two 1-year extensions may be issued under this subparagraph for a single nonattainment area. Section 181(a)(5) (under subpart 2) contains a similar provision, but instead of allowing a "minimal" number of exceedances, it provides for only one exceedance

of the standard in the year preceding the extension year. This reflects the form of the 1-hour ozone standard, which is exceedance-based. The 8-hour ozone standard, however, is not an exceedance form of standard, but rather a concentration-based standard.[20] ~~The EPA~~We ha~~s~~ve issued guidance on the portion of these two provisions relating to the State's compliance with all requirements and commitments pertaining to the area in the applicable implementation plan.[21] However, for purposes of section 181(a)(5), ~~EPA~~we need~~s~~ to determine a reasonable interpretation in light of the fact that the statute, as written, does not fit the form

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[20]See 40 CFR 50.9(a); the 1-hour standard for ozone "... is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 $\mu g/m^3$) is equal to or less than 1 in order for the area to be considered attaining the standard, as determined by Appendix H to this part." Thus, the 1-hour standard is an "exceedance" based standard, since the number of exceedances of the standard (yearly average over 3 years under appendix H) must be equal to or less than 1. In contrast, see 40 CFR 50.10(b); the 8-hour standard for ozone is ". . . met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I to this part." Thus, this is a concentration-based standard, because meeting the standard is determined by calculating the concentration, not the number of exceedances as under the 1-hour standard.

[21]Memorandum of February 3, 1994, from D. Kent Berry re: "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas."

of the 8-hour standard. Because Congress has addressed this issue elsewhere in the statute, ~~EPA~~we believe~~s~~ it is reasonable to adopt that formulation. Therefore, ~~EPA~~we would apply the same test under subparts 1 and 2 for determining whether to grant a 1-year extension, i.e., whether there was a minimal number of exceedances. For both subparts, ~~EPA~~we propose~~s~~ to interpret this to mean for the 8-hour standard, the area would be eligible for the first of the 1-year extensions under the 8-hour standard if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. An area that has received the first of the 1-year extensions under the 8-hour standard would be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

3. How do attainment dates apply to Indian country?

As discussed elsewhere in this proposed rulemaking, the Tribal Authority Rule (TAR), 40 CFR 49.9 provides that Tribes should not be treated in a manner similar to States with regard to schedules, including the attainment dates. However, the TAR also requires EPA to develop Federal implementation plans (FIPs) where necessary and appropriate.

40 CFR 49.11. Because ~~EPA~~we believe~~s~~ that public health considerations are of primary concern, the attainment dates for primary NAAQS should be met. Therefore, EPA, in consultation with the Tribes, will work to ensure that the standards are addressed as soon as possible, considering the needs of the Tribes, and ensure that attainment in other jurisdictions is not adversely affected.

4. How will EPA establish attainment dates for areas classified as marginal under the "incentive" feature proposed under the classification section or areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date?

The EPA would ordinarily have established attainment dates for areas through a review of the SIP and whether attainment is as expeditious as practicable but no later than the date prescribed in the Act. Elsewhere in this notice, ~~EPA is~~we are providing that marginal areas (under subpart 2) and areas under subpart 1 with an attainment date within 3 years after designation would not actually have to submit an attainment demonstration within 3 years after designation. Therefore, ~~EPA~~we must establish another procedure for establishing the attainment dates for these areas. ~~The EPA is~~We are proposing the following procedure.

a. Areas that are classified marginal based solely on their 8-hour ozone design value. For these areas, ~~EPA is~~we are proposing that the Clean Air Act's attainment date under Table 1 of section 181 would be the area's attainment date (namely, 3 years after designation).

b. Areas that are classified marginal based on the proposed incentive feature proposed elsewhere and areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date. These are areas that are projected through modeling to attain within 3 years following designation. For these areas, ~~EPA is~~we are proposing that these States must submit a SIP--within 1 year after designation--that provides documentation (viz., concerning the modeling and analyses that the area is relying on to support its claim) that the area will attain within 3 years following designation. Such a SIP submission must undergo the normal public hearing and comment procedures as for any SIP submission.

~~[NOTE: THE FOLLOWING 2 SECTIONS ARE BEING REDRAFTED (WILL LIKELY BE COMBINED INTO ONE SECTION]~~

C. How will EPA implement the transition from the 1-hour to the 8-hour standard~~?~~

~~D. How will EPA ensure that the applicable requirements of~~

~~the CAA~~ in a way to ensure continued momentum in States' efforts toward cleaner air?

As areas are designated for the 8-hour ozone NAAQS, we must address how those areas will transition from current implementation of the 1-hour standard to implementation of the 8-hour standard. In addressing this issue, we considered a number of factors, including the existing "anti-backsliding" provisions of the Clean Air Act, Congress' intent, as evidenced in the statute, to ensure continued progress toward attainment of the ozone standard, and the Supreme Court's interpretation of the Clean Air Act and Congressional intent. In subsection 1 of this section, we provide background information on the transition process we set forth in 1997 (and subsequently amended through regulation) and we summarize the statutory anti-backsliding provisions and the Congressional intent in enacting these provisions and subpart 2 of the CAA. In subsection 2, we indicate - in light of the CAA provisions and Congressional intent - which requirements that applied for purposes of the 1-hour standard should continue to apply ~~under the mechanism selected for transitioning from the 1-hour~~to areas after they are designated for the 8-hour standard. Next, in subsection 3, we consider whether there is a point at which

the states should no longer be required to continue to implement those obligations EPA determines continue to apply after areas are designated for the 8-hour standard. In subsection 4, we identify two proposed options to effect the transition from implementation of the 1-hour standard to the 8-hour standard~~?~~

~~E~~ that concern the revocation of the 1-hour standard in whole or revocation of the 1-hour standard in part. Finally, in subsection 5, we indicate how it will ensure through regulation that the public knows which "1-hour" obligations remain in place and for which areas.

1. Background

a. Background on EPA's current regulation for governing the transition

At the time we promulgated the 8-hour ozone NAAQS in July 1997, we issued a rule (40 CFR 50.9(b)) providing that the 1-hour standard would no longer apply to an area once we determined that the area had attained the 1-hour NAAQS. 62 FR 38856 (July 18, 1997). This process became known as "revocation" of the 1-hour NAAQS. We interpreted that provision to mean that once the 1-hour standard was revoked, the area's 1-hour ozone designation no longer applied. Due to the ongoing litigation concerning the 8-hour ozone NAAQS

and our implementation strategy for that standard, we subsequently modified 40 CFR section 50.9(b) in part to provide that "after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once we determine that the area has air quality meeting the 1-hour standard." See 65 FR 45181 (July 20, 2000).[22] Thus, currently, three criteria would need to be met before we could revoke the 1-hour standard for an area: (1) the 8-hour standard would need to be fully enforceable, (2) all legal challenges to the 8-hour ozone NAAQS would need to be resolved; and (3) we would need to determine that an area had attained the 1-hour standard.

In this section, we are proposing to revise 40 CFR section 50.9(b) to reflect more appropriately the implementation strategy that we develop pursuant to this proposal. At the time that we initially promulgated 40 CFR section 50.9(b), we contemplated that areas would not be subject to the planning obligations of subpart 2 for

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[22]On December 27, 2002(67 FR 79460), EPA proposed to stay the applicability of its authority to revoke the 1-hour standard pending rulemaking to consider whether to modify the approach for transitioning to the 8-hour standard.

purposes of implementing the revised 8-hour ozone NAAQS. Furthermore, we stated that "as a matter of law," areas should continue to be subject to the planning obligations of subpart 2 for purposes of implementing the 1-hour standard until such time as they attained the 1-hour ozone NAAQS. Thus, we contemplated that the 1-hour NAAQS--and the associated designation and classification under subpart 2 for an area, including any mandated control obligations--would continue to apply until the area attained that standard. At that time, the area would be subject only to the planning obligations of subpart 1. In light of the Supreme Court's ruling that we cannot ignore subpart 2 for purposes of implementing a revised ozone NAAQS, we believe it is appropriate to reconsider how to transition from the 1-hour NAAQS to the 8-hour NAAQS in light of the statutory structure of the CAA, as amended in 1990.

Our principal objectives for the mechanism that would ensure a smooth transition to implementation of the 8-hour standard are to ensure (1) that there will be no degradation of air quality, (2) that areas continue to make progress toward ozone attainment, and (3) consistency with the intent of Congress when it originally established the implementation structure for ozone in subpart 2 of the CAA.

We believe the several alternative approaches proposed below are more consistent with the implementation path we are proposing in light of the Supreme Court's remand. These alternatives would more effectively continue the momentum towards cleaner air than would have been accomplished under the current 40 CFR 50.9(b) structure while allowing 8-hour ozone nonattainment areas to more readily focus on their 8-hour ozone standard SIP obligations.

b. Background on the CAA's Anti-Backsliding Provisions. The CAA contains a number of provisions that indicate that Congress did not intend to allow States to alter or remove provisions from implementation plans if the plan revision would jeopardize the air quality protection provided in the approved plan. Section 110(l) provides that EPA may not approve a SIP revision if it interferes with any applicable requirement concerning attainment and ROP or any other applicable requirement of the CAA. Congress created a tougher test for areas that might want to relax control requirements that were in SIPs prior to the CAA Amendments of 1990. Section 193 of the CAA prohibits modification of a control requirement in effect or required to be adopted as of November 15, 1990 (i.e., enactment of the 1990 CAA Amendments), unless such a modification would ensure

equivalent or greater emissions reductions.

We also believe that Congress set an additional statutory bar for 1-hour ozone areas that were designated nonattainment and classified at the time of the 1990 CAA Amendments. For these areas, Congress classified the areas "as a matter of law" and provided that even upon redesignation to attainment, such areas could not remove from the SIP control measures specified in subpart 2 ("applicable requirements"), but could shift them to contingency measures that would be implemented to "promptly correct any violation of the standard."

For these reasons, we believe that although Congress gave EPA the power to revise the existing ozone standard, Congress did not open the door for States to remove SIP-approved measures or to avoid control obligations with which they have not yet complied.

One other provision, though not directly applicable, sheds light on Congress' intent. In 1990, Congress enacted section 172(e), which applies when EPA revises a NAAQS and makes it less stringent. This provision specifies that in those circumstances, States cannot relax control obligations that apply in nonattainment area SIPs or avoid adopting

those that they have not yet adopted.[23] Because Congress specifically mandated that such control measures need to be adopted or retained even when EPA relaxes a standard, we believe that Congress did not intend to permit States to remove control measures when EPA revises a standard to make it more stringent, as in the case of the 8-hour standard.

We also note that in finding EPA's subpart 1-only implementation approach unlawful, the Supreme Court voiced concern that EPA not render subpart 2 "abruptly obsolete" because "Subpart 2 obviously was enacted to govern implementation for some time. ... A plan reaching so far into the future was not enacted to be abandoned the next time EPA reviewed the ozone standard - which Congress knew could happen at any time, since technical staff papers already had been completed in 1989." In response to the decision, we are now proposing (as noted above in the discussion on classifications) to use subpart 2 in implementing the 8-hour standard. However, the classification systems we are proposing today would result

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[23] Specifically, section 172(e) requires EPA to promulgate regulations providing for controls that "are not less stringent than the controls applicable to areas designated nonattainment" before relaxation of the standard.

in the majority of ozone nonattainment areas that are currently classified for the 1-hour standard being placed in a lower classification for the 8-hour standard. Our proposed anti-backsliding approaches, discussed below, avoid rendering obsolete the congressionally-specified control measure requirements of subpart 2 for 1-hour ozone nonattainment areas at a time when those areas have not yet met either of the health-based ozone standards.

2. What obligations should continue to apply as an area begins to implement the 8-hour ozone NAAQS and what obligations should no longer apply?

In this section, we consider what obligations from subpart 2 relative to the 1-hour ozone standard should continue to apply to areas after they have been designated for the 8-hour standard. We are proposing that the continuity of particular obligations should vary depending on the attainment status of an area for both the 1-hour and 8-hour standard. We first discuss those obligations that we propose should continue to apply to an area that is designated nonattainment for the 8-hour NAAQS, and that was designated nonattainment for the 1-hour ozone standard on or after November 15, 1990. Second, we discuss those obligations that should continue to apply to an area that is

designated attainment for the 8-hour NAAQS, and that was designated nonattainment for the 1-hour standard on or after November 15, 1990. (This section addresses only the continued application of requirements that applied by virtue of an area having been designated nonattainment for the 1-hour standard at some point following enactment of the CAA Amendments of 1990. It does not address areas that have been designated attainment for the 1-hour standard at all times since November 15, 1990, because they would not have any continuing obligations under subpart 2 for purposes of the 1-hour standard.) Finally, we address States' continued obligations with respect to the NO_x SIP Call. We address this issue separately since this obligation applies statewide and without respect to the designation status of areas within the state.

In general, the types of obligations that apply to areas by virtue of their 1-hour classification can be broken into three groups: control obligations; measures to address growth in new sources; and planning obligations. Control measures include specific emission reduction obligations such as NO_x RACT, I/M, and fuel programs, which are mandated in subpart 2. Measures to address growth are new source review (required under subpart 1 and subpart 2) and

conformity (required by subpart 1). Planning obligations consist of attainment and maintenance demonstrations and reasonable further progress plans. For purposes of clarifying what we are proposing with respect to control measures, we also discuss in this section "discretionary" control measures that are not specified in subpart 2. Generally, these are control measures or other obligations the state selected and adopted into the SIP for purposes of attainment, ROP or any other goal to benefit air quality, but which are not specifically mandated by subpart 2.

a. What obligations should continue to apply for an area that is designated nonattainment for the 8-hour NAAQS and that was designated nonattainment for the 1-hour ozone NAAQS on or after November 15, 1990? We believe that Congress intended each area that was classified for the 1-hour ozone NAAQS under subpart 2 to adopt the specified control obligations in subpart 2 for the area's 1-hour classification. We interpret the mandated obligations in subpart 2 for purposes of an area's 1-hour ozone classification to remain applicable to such areas by virtue of the area's classification "as a matter of law" in 1990. (Appendix B of this proposed rulemaking contains a list of the subpart 2 requirements that remain applicable.) The

three types of obligations described above (control obligations, measures to address growth in new sources, and planning obligations) are discussed separately below.

(i) Control measures. We are proposing that all areas designated nonattainment for the 8-hour ozone NAAQS remain subject to control measures that applied by virtue of the area's classification for the 1-hour standard. To the extent the area has met the obligation and the control measure is a part of the approved SIP, the State could not modify or remove that measure except to the extent that it could modify or remove that measure for purposes of the 1-hour standard and subject to a demonstration under section 110(l) that modification or removal would not interfere with attainment or maintenance of the 8-hour ozone NAAQS.[24] For control measures that the State has not yet adopted, the State remains obligated to adopt and submit such controls. And, once adopted into the approved SIP, the State could not

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[24] In addition, for a revision to an obligation that was in effect prior to November 15, 1990, section 193 prohibits a SIP revision without a showing that it would result in equivalent or greater emission reductions. For purposes of avoiding repetition, we do not mention section 193 in each of the examples discussed in this section. However, States remain obligated to make the section 193 demonstration for any revision to a requirement that applied prior to November 15, 1990.

modify or remove that measure except to the extent that it could modify or remove that measure for purposes of the 1-hour standard and subject to a demonstration under section 110(l) that modification or removal would not interfere with attainment or maintenance of the 8-hour ozone NAAQS. This obligation would apply only to the part of the 8-hour ozone nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS.

To illustrate what we are proposing, we provide the following example, which will also be used in the next section discussing discretionary control measures. Assume an area is classified as marginal for the 8-hour ozone NAAQS and was classified as serious for the 1-hour ozone NAAQS at the time of the 8-hour designations. Also assume RACT for a particular source category is considered an 80 percent reduction in uncontrolled emissions of VOCs at all major sources. In its 1-hour SIP, the State chose to require emission reductions of 90 percent and the RACT requirement applied to all major stationary sources, which for a serious area includes all sources that emit greater than 50 tons/year VOCs. After designation for the 8-hour standard, the State wants to modify this RACT requirement to require only 80 percent reduction in emissions and to limit the

requirement to sources that emit 100 tons/year of VOCs. Because the State could not have modified the RACT obligation to apply only to sources emitting 100 tons/year or more of VOCs for purposes of the 1-hour standard, the State could not change the source cut-off from 50 tons/year for purposes of the 8-hour standard. The 50 tons/year major source threshold would continue to be an "applicable requirement" for the part of the area that was designated nonattainment for the 1-hour NAAQS. The State, however, could apply RACT only to sources that emit 100 tons/year or more for any portion of the area that was not a part of the 1-hour serious nonattainment area. While the 80 percent control level would be considered mandatory, the 90 percent control level was not mandated by the Act and thus is considered a "discretionary control measure." We address below how modification of a discretionary control measure would be treated under this proposal.

The same principle would hold true for control measures in a maintenance plan for an area that was designated nonattainment for the 1-hour standard at or after November 15, 1990 and that was subsequently redesignated to

attainment under the 1-hour ozone standard.[25] Subpart 2 control measures (including those that had been shifted to contingency measures) could not be removed from the SIP and could be modified only to the extent that they could have been modified if the 1-hour standard remained in effect for the area. If the State had previously shifted a mandated subpart 2 control measure to its contingency plan, we would not require that the area begin to implement that measure as part of its 8-hour implementation plan, if the measure was not required under its classification under the 8-hour standard. However, the measure would need to remain as a contingency measure for the area and could not be removed from the SIP.

(ii) Discretionary control measures. Many approved SIPs contain control measures that are not specified under subpart 2 for the area, but that the State chose to adopt as part of the demonstration of attainment or part of the ROP

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[25]A maintenance plan, which is a SIP revision required under sections 107(d)(3)(E) and 175A as a prerequisite for redesignating a nonattainment area to attainment, must provide for maintenance of the NAAQS for 10 years after redesignation and must contain contingency measures to promptly correct any violation of the standard that occurs after redesignation. Contingency measures must provide for implementation of all measures that were contained in the SIP for the area before redesignation of the area as an attainment area.

requirement for the 1-hour NAAQS. For these kinds of measures, we are proposing that no additional burden be placed on the State. For purposes of the 1-hour standard, States may currently revise or remove those requirements so long as they make a demonstration consistent with section 110(l) that such removal or modification would not interfere with attainment of or progress toward the 1-hour ozone NAAQS (or any other applicable requirement of the Act). Under the CAA, for purposes of the 8-hour standard, the same obligation would apply except the State would need to make the demonstration with respect to the 8-hour standard instead of the 1-hour standard.

In the example above, if a State wants to revise the control level for certain sources from 90 percent control to 80 percent control, the State may do so because subpart 2 mandated RACT in this example is an 80 percent level of control rather than a 90 percent control level. The 90 percent control level thus was "discretionary." We are proposing that no additional burden, beyond the statutory section 110(l) test, be placed on the state to alter this requirement. Thus, to revise the control level, the state would need to demonstrate, consistent with section 110(l), that the lower control level of 80 percent would not

interfere with attainment of the 8-hour standard or reasonable further progress for the 8-hour standard (or any other applicable requirement of the Act).

A number of SIPs contain enforceable commitments to adopt additional discretionary emission reduction control measures in the future. The State remains obligated to these commitments to the same extent as if they were adopted measures. The only way a State may modify or remove such a commitment is through a demonstration under section 110(l).

(iii) Measures to address growth. For 1-hour nonattainment NSR requirements in place at the time an area is designated nonattainment for the 8-hour standard, we are proposing that the major source applicability cut-offs and offset ratios continue to apply to the extent the area has a higher classification for the 1-hour standard than for the 8-hour standard. We see no rationale under the CAA - given the Congressional intent for areas "classified by operation of law" - why the existing NSR requirements should not remain "applicable requirements" for the portion of the 8-hour nonattainment area that was classified higher for the 1-hour standard. However, if an area has been redesignated to attainment for the 1-hour standard as of the date of designation for the 8-hour standard, and is thus no longer

implementing the nonattainment NSR program for its previous 1-hour ozone classification, it would not need to revert back to program it had for purposes of the 1-hour standard.

For example, if an area is classified moderate under the 8-hour standard, but was classified severe under the 1-hour standard at the time of the 8-hour designations, the portion of the 8-hour nonattainment area that was classified severe for the 1-hour standard would remain subject to an offset ratio of 1.3:1 and a major source threshold of 25 tons/year. The remaining portions of the 8-hour area would be subject to the offset ratio for moderate areas (1.15:1) and the moderate area major source threshold (100 tons/year). If the severe 1-hour area had been redesignated to attainment prior to the time of the 8-hour designations and was subject to PSD rather than NSR, however, the entire designated area for the 8-hour standard would be subject to the offset ratio and major source threshold for a moderate area.

(iv) Planning SIPs. Most areas that are nonattainment under the 1-hour standard have already adopted attainment and ROP plans. However, there are a few areas that remain obligated to submit attainment or ROP SIPs. We propose how to address ROP elsewhere in this proposed rulemaking and will not

repeat those options in detail here. In general, however, we are proposing that States are still obligated to address separately ROP that does not overlap with ROP obligations for the 8-hour NAAQS. Where the ROP obligations overlap, the area need not separately address ROP for the 1-hour standard. For ROP already adopted into the SIP, we are proposing that the State may remove or revise control measures needed to meet the ROP milestone if such control measures were "discretionary," as discussed above. But, a State could not revise or remove control measures if they would interfere with meeting the ROP goals. In other words, the CAA-mandated ROP emission reduction targets that applied for the 1-hour standard would still have to be met, but discretionary measures adopted to meet those targets could be modified, if the State makes the necessary showing under section 110(l).

With respect to attainment demonstrations, we are soliciting comment on the interpretation it should take for the two scenarios we believe exist. The first scenario would be a State that does not have a fully approved attainment demonstration under the 1-hour standard because it has failed to act in a timely manner. The second scenario is an area subject to an obligation to submit an

attainment demonstration under the 1-hour standard in the future. In general, since attainment demonstrations are planning SIPs, and States must now be planning to attain the 8-hour NAAQS, one might argue that Congress could not have intended areas to continue to plan to meet a standard that EPA no longer considers to be adequately protective of public health. This is especially true when to do so would divert resources from planning to meet the 8-hour standard. In contrast, one could argue that allowing areas to bypass planning obligations under the 1-hour standard will delay attainment of health protection since States have more time to submit attainment plans under the 8-hour standard than under the 1-hour standard.[26]

There are some cases where a State does not have a fully-approved attainment demonstration because it has failed to act in a timely manner. To lift that obligation

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[26]For instance, an area with a past-due obligation to revise its SIP to develop a new attainment demonstration for the 1-hour standard could possibly submit such a revision within the next year or so (2004-2005), with emission reductions beginning to occur likely within 1 or 2 years (by 2006-2007). If this area were now only required to address the 8-hour standard, it would not have to submit a new attainment demonstration until 2007, as proposed elsewhere in this proposed rule, with emission reductions occurring from that demonstration likely a year or more after 2007, which is several years after the time period possible by fulfilling the existing obligation.

from those areas simply because EPA had adopted a more stringent NAAQS could result in a more preferential treatment of those areas over areas that did adopt fully-approvable attainment demonstrations with the requisite controls. For example, if an area has adopted controls to demonstrate attainment of the 1-hour standard, it may not remove those controls from its SIP without a demonstration that those controls would not interfere with attainment or progress toward the 8-hour standard (or any other applicable requirement of the Act). Such an area likely would have more stringent control obligations in place than the area without a fully-approved attainment SIP and would have a high hurdle to removing or altering those controls. In contrast, the area without a fully-approved attainment demonstration would likely make slower progress toward attaining the 8-hour NAAQS (at least in the short-term) because it does not have all necessary measures in its approved SIP and--without a clear requirement to the contrary--would be under no pressure to have those measures in its SIP until its attainment demonstration for the 8-hour NAAQS is due.

For the following examples of actual situations, we are soliciting comment on whether to retain the obligation to

develop a 1-hour attainment demonstration or to determine that the requirement no longer applies. In addition, we are soliciting comment on two alternatives that might address some of the inequities, while not subjecting States to the more complicated planning associated with developing two separate attainment demonstrations (one under the 1-hour standard and another under the 8-hour standard). Under the first alternative approach, areas that are subject to an obligation to submit a new or revised attainment demonstration would instead be required to submit a SIP revision that would obtain an advance increment of emission reductions toward attainment of the 8-hour ozone standard within a specified, short-term timeframe. For example, we could require these areas to submit within 1 year of promulgation of the implementation rule a plan revision that requires a specific percentage of emission reductions (e.g., 5 percent or 10 percent) from the baseline emissions for the 8-hour NAAQS. In addition, we could require that the measures be implemented in the near term, e.g., no more than 2 years after the required submission date. Under the second alternative, areas with an outstanding obligation to submit a 1-hour attainment demonstration would be required to submit their 8-hour ozone attainment demonstration early

in lieu of being required to submit a 1-hour attainment demonstration. Submittal of an early 8-hour attainment demonstration would likely prevent the inequity of areas avoiding emission reductions in the short term, as described in the preceding footnote.

• Example 1: An area has not met in part or in full a past-due obligation to submit a 1-hour attainment demonstration required because EPA reclassified the area to a higher classification after it failed to attain the 1-hour standard by its attainment date.

• Example 2: An area is subject to an obligation to submit an attainment demonstration in the future, as is the case where EPA applied its attainment date extension policy rather than reclassifying an area that failed to meet its attainment date and EPA has subsequently reclassified the area or soon will do so, because of the courts' rejection of the extension policy.

(v) Other Obligations. A number of areas have SIPs that contain commitments to review their progress toward attaining the 1-hour NAAQS (in some cases, these are called "mid-course reviews"). These SIP-approved commitments are enforceable, and EPA and the States can use these mid-course reviews to ensure that progress is being made consistent with the analysis in the area's 1-hour attainment demonstration. The State remains obligated to honor these commitments.

b. What obligations continue to apply for areas that are

designated attainment under the 8-hour standard and that were designated nonattainment for the 1-hour standard on or after November 15, 1990?

(i) Obligations Related to NSR. Areas that are attainment for the 8-hour ozone NAAQS would not be subject to nonattainment NSR for the 8-hour standard. We believe it makes little sense to require nonattainment NSR to continue simply because these areas were previously designated nonattainment for the 1-hour standard. Thus, we propose that these areas would be subject to PSD and would not be subject to the nonattainment NSR offset and major source thresholds that applied under their classification for the 1-hour standard.

(ii) Obligations Related to Planning Obligations Other than Maintenance Plans. With respect to SIP planning obligations (ROP plans and attainment demonstrations), we are proposing that the SIP planning requirements that applied for purposes of the 1-hour standard would not continue to apply to these areas as long as they continue to maintain the 8-hour NAAQS. Thus, even if these areas have failed to meet ROP or attainment plan obligations for the 1-hour standard, they would not be required to meet them for so long as they remain in attainment with the 8-hour standard. (As

discussed below, however, we are proposing that such areas develop a maintenance plan under section 110(a)(1).) This approach is consistent with EPA's "Clean Data Policy"[27] under the 1-hour standard, which provides for these planning obligations to be stayed once an area attains the standard, but only for so long as an area remains in attainment of the 1-hour standard. If such an area violates the 8-hour NAAQS--prior to having an approved maintenance plan in effect (as proposed below to be required for these areas)--those obligations would once again apply in the same manner that they apply in areas designated nonattainment for the 8-hour ozone NAAQS.

(iii) Obligations Related to Control Measures and Maintenance Plans. The issue of what obligation remains with respect to "non-discretionary" control measures approved into the SIP or required under the Act is more difficult. Our approach for these is based on the Act's requirements for maintenance plans. (Consistent with our proposal for discretionary control measures in areas

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[27]Memorandum of May 10, 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf.

designated nonattainment for the 8-hour NAAQS, we would permit areas to modify discretionary measures for areas designated attainment for the 8-hour NAAQS so long as section 110(l) is met.)

If EPA determined that these areas[28] were required to develop maintenance plans pursuant to section 175A, then they would need to keep (or to adopt and then keep) those control measures in the SIP, though they could shift them to contingency measures. Some commenters urged us to require all areas previously designated nonattainment for the 1-hour NAAQS to retain (where the area had been redesignated to attainment) or develop (where the area was still designated nonattainment for the 1-hour NAAQS at the time of 8-hour designations) a section 175A maintenance plan. However, we do not believe that a section 175A maintenance plan is mandated or is necessary for areas initially designated attainment for the 8-hour NAAQS.

Section 175A maintenance plans are required for areas that were designated nonattainment for a NAAQS and then subsequently redesignated to attainment for that NAAQS. The

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[28]Areas that are designated attainment under the 8-hour standard and that were designated nonattainment for the 1-hour standard on or after November 15, 1990.

areas addressed in this section have never been designated nonattainment for the 8-hour ozone NAAQS. Moreover, they have a maintenance obligation that already applies: Section 110(a)(1) requires areas to demonstrate how they will attain and maintain a new or revised NAAQS.[29] Therefore, we do not believe that Congress mandated that such areas be subject to the section 175A maintenance plan obligation for the 8-hour NAAQS, nor do we believe it is necessary to interpret that provision to apply.

For an area that was never redesignated to attainment for the 1-hour standard and never had a section 175A maintenance plan, we are proposing that if the area wants to revise any part of its current 1-hour SIP, the area must first adopt and submit a maintenance plan consistent with section 110(a)(1). Moreover, even if the State elects not to revise its existing SIP, we are proposing that the area submit a section 110(a)(1) maintenance plan within 3 years of designation as attainment for the 8-hour NAAQS. We believe that the maintenance plan should provide for

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[29] Based on ambient ozone data for the period 1998 to 2000 for the hypothetical nonattainment areas, we identified approximately 20 areas that are currently designated nonattainment under the 1-hour standard but that will likely be designated attainment under the 8-hour standard).

continued maintenance of the 8-hour standard for 10 years following designation for the 8-hour NAAQS and should include contingency measures. Unlike section 175A, section 110(a)(1) does not address contingency measures and thus does not specify that mandated controls in the existing SIP must be shifted to contingency measures if modified or removed. We are proposing that so long as the State adopts sufficient measures as contingency measures, it can modify or remove control measures in the approved SIP so long as it makes a demonstration consistent with section 110(l).

We are also proposing that areas with approved 1-hour section 175A maintenance plans will be able to modify those maintenance plans consistent with their obligation to have a maintenance plan for the 8-hour NAAQS under section 110(a)(1). For these areas, we are proposing that the following obligations could be removed from the SIP so long as the State demonstrates that the area will maintain the 8-hour standard consistent with section 110(a)(1) for a period of 10 years following designation for the 8-hour NAAQS:

- the obligation to submit a maintenance plan for the 1-hour standard 8 years after approval of their initial 1-hour maintenance plan;

- the requirement to implement contingency measures upon a violation of the 1-hour ozone standard; however, such areas would need contingency measures as part of a

maintenance SIP for the 8-hour NAAQS and States could elect to modify the existing contingency measure trigger so that it is based on a violation or exceedance of the 8-hour standard.

(iv) Obligations Related to Conformity. For all areas designated attainment for the 8-hour ozone NAAQS, the requirement to demonstrate conformity to the 1-hour standard would no longer apply once the 1-hour standard is revoked in whole or determined not to apply for that purpose under a partial revocation of the 1-hour standard (as proposed below). Under section 176 of the CAA, conformity applies to areas designated nonattainment or subject to the requirement to develop a maintenance plan pursuant to section 175A. Areas designated attainment for the 8-hour standard would no longer be subject to the obligation to demonstrate conformity to the 1-hour emissions budgets in an approved attainment or rate of progress SIP or an approved section 175A maintenance plan for the 1-hour standard. The reason for this is that, under the options proposed below, they would either no longer be designated nonattainment for the 1-hour standard or the nonattainment designation would no longer apply for purposes of conformity, and the area would no longer be required to develop a maintenance plan under section 175A for purposes of the 1-hour standard.

c. What happens with respect to the NO_x SIP Call?

Section 110(a)(2)(D) of the CAA establishes requirements for States to address the problem of transport. It requires a SIP to prohibit the State's sources from emitting air pollutants in amounts that will contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. As noted above in Section I of this proposal, in 1998, EPA called on 22 States and the District of Columbia ("States") to reduce emissions of NO_x consistent with budgets set for each State. 63 FR 57356 (October 27, 1998). Furthermore, EPA granted petitions under section 126 and thus directly regulated certain sources of NO_x emissions in many of the States covered by the NO_x SIP Call. 65 FR 2674 (January 18, 2000). Below, we refer to these collectively as the "NO_x transport rules."

The NO_x transport rules were designed to prevent upwind NO_x emissions from contributing to nonattainment in a downwind area for both the 1-hour and 8-hour ozone NAAQS. The EPA, however, stayed the 8-hour basis for the NO_x transport rules in response to the extensive and extended litigation (described above) that occurred concerning the establishment of the 8-hour ozone standard. We intend to

take rulemaking action to lift the stay of the 8-hour basis for these rules. We recognize, however, that concerned parties may attempt to challenge the 8-hour basis for the NO_x transport rules when EPA lifts the stay.

We believe it important to ensure that the transition to the 8-hour standard does not have the effect of jeopardizing the controls required to be in place under the NO_x transport rules. Regardless of whether EPA lifts the stay of the 8-hour basis for these rules, the controls required have substantial benefits for reductions of both 1-hour and 8-hour ozone levels. We believe that relaxing such controls would be contrary to the principles we identified above for an effective transition. Consequently, we are proposing that States must continue to adhere to the emission budgets established by the NO_x SIP Call after the 1-hour standard is revoked in whole or in part, as proposed below. Similarly, we are not proposing to revoke or modify its section 126 regulation.

However, as they do now, States retain the authority to revise the control obligations they have established for specific sources or source categories, so long as they continue to meet their SIP Call budgets. In addition, consistent with section 110(l), the States would need to

demonstrate that the modification in control obligations would not interfere with attainment of or progress toward the 8-hour NAAQS or with any other applicable requirement of the Act.

d. What additional obligations under part D of title I of the CAA would not continue to apply after the 1-hour standard is revoked in whole or in part?

As discussed elsewhere in this proposal, we are proposing that areas would not be obligated to continue to demonstrate conformity for the 1-hour standard once the 1-year grace period for application of conformity for the 8-hour standard has elapsed.

In addition, EPA would not take certain actions with respect to the 1-hour ozone NAAQS. First, we are proposing that it would no longer make findings of failure to attain the 1-hour standard and, therefore, would not reclassify areas to a higher classification for the 1-hour standard based on a failure to meet the 1-hour standard. We believe that areas should focus their resources on attainment of the 8-hour standard and that it would be counterproductive to establish new obligations for States with respect to the 1-hour standard after they have begun planning for the 8-hour standard. (Moreover, we note that the attainment dates for

marginal, moderate and serious areas have passed and the CAA does not provide for reclassification of severe areas in the absence of a request by the State.) The EPA, of course, must ensure that areas are continuing to make progress toward cleaner air. If EPA determines that a State is not adequately implementing an approved SIP and achieving air quality reductions in a timely manner, EPA may enter into an informal process to ensure the State takes any necessary action[30] or, alternatively, may take more formal action such as making a finding of failure to implement the SIP or issuing a SIP Call to require action. As noted above, many areas have SIPs that contain commitments to review their progress toward attaining the 1-hour NAAQS ("mid-course review"). These SIP-approved commitments are enforceable, and EPA and the States can use these mid-course reviews to ensure that progress is being made consistent with the analysis in the area's 1-hour attainment demonstration.

3. Does the requirement for continued implementation of the obligations addressed above expire at some point?

The SIP obligations under the 1-hour standard for an

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[30]For instance, upon discussion between EPA and States, some States have in the past voluntarily agreed to revise their SIPs when it appears that the SIP is inadequate to attain or maintain the NAAQS.

area's classification under the 1-hour standard would not expire after the 1-hour standard is revoked in whole or in part. However, for those mandatory requirements that continue to apply to an area due to the area's classification for the 1-hour NAAQS, we are proposing two options for when the State may move the mandatory measures to a maintenance plan in the SIP and treat them as contingency measures:

a. Option 1. When the area achieves the level of the 1-hour ozone standard (even if the area has not yet attained the 8-hour standard). The rationale for this option is that Congress intended an area to continue to implement these obligations until it attained the 1-hour standard, at which time the area would be able to discontinue implementation upon a showing of continued maintenance. However, in such a case, the area could not remove the measures from the SIP; rather, it could shift such measures to contingency measures. While this option facially appears to mirror Congressional intent more closely, it raises issues where an area attains the 8-hour standard but does not have air quality meeting the 1-hour standard.

b. Option 2. When the area attains the 8-hour standard and is designated attainment (regardless of when, if ever, the

area attains the 1-hour standard). The rationale for this option is that the 8-hour standard is the standard that EPA has determined will protect public health and the environment. Once an area demonstrates it has met and can maintain the health protective standard, it would be appropriate to remove or modify those controls.

It should be noted that either of these two options could apply for either of the transition options, discussed in section 4, below.

4. When will EPA revoke the 1-hour standard?

We are proposing to revoke the 1-hour standard either in part or in whole 1 year following designations for the 8-hour NAAQS. As discussed below, we are proposing two different legal mechanisms for achieving the revocation. Under either approach, however, the same stipulations continue to apply to areas currently or formerly designated nonattainment for the 1-hour standard.

The deciding factor supporting the schedule for the revocation in our proposal is to ensure areas do not have to perform conformity analyses for both the 1-hour and 8-hour standards at the same time. As background, areas designated nonattainment for the first time for a new standard (e.g., the 8-hour ozone standard) have a 1-year grace period before

conformity applies for that standard (i.e., a 1-year grace period before conformity applies for the 8-hour ozone standard). This 1-year grace period before conformity is required for the 8-hour standard applies to all areas designated nonattainment for the 8-hour standard, regardless of their 1-hour NAAQS designation status. Thus, under either of the mechanisms described below, we are proposing that conformity for the 1-hour standard no longer apply 1 year following the effective date of the 8-hour designation (i.e., when the standard is revoked in whole or in part). However, conformity obligations for the 1-hour ozone standard would remain applicable during the grace period and would not be affected by the designation of areas for the 8-hour standard. Our intentions regarding conformity--as well as a more complete discussion of transportation conformity--appears elsewhere in this proposal.

a. Proposed Options.

(i) Option 1: Revocation in whole of the 1-hour standard. Under this option, which is our preferred option, EPA would revoke the 1-hour standard and the associated designations and classifications 1 year following the effective date of the designations for the 8-hour NAAQS. The complete

revocation of the 1-hour standard would occur in late spring of 2005 on the effective date of the 8-hour NAAQS designations, which will be issued by April 15, 2004. In order to address the anti-backsliding issues discussed in section 2, above, EPA would promulgate regulations specifying those requirements that would continue to apply after the revocation of the 1-hour standard. The regulations would also specify the geographic areas in which those obligations continue to apply, since areas designated nonattainment for the 8-hour standard may include counties that were not designated nonattainment for the 1-hour standard. The anti-backsliding regulations would apply only to the portion of the 8-hour nonattainment area that was designated nonattainment for the 1-hour standard.

(ii) Option 2: Partial Revocation of 1-hour Standard. Under this mechanism, EPA would retain the 1-hour standard and its associated designations and classifications for limited purposes (viz., those discussed and proposed above in section 2) until the area meets the 1-hour standard. For many areas, this is likely to extend well beyond May 2005, the date of likely revocation under Option 1.[31] For all

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[31] A number of commenters in the pre-proposal phase recommended an approach premised on retention of the

remaining purposes, EPA would revoke the 1-hour standard and the associated designations and classifications 1 year after the effective date of designations for the 8-hour standard. As noted above, we believe that Congress initially intended the State's obligations under subpart 2 to continue to apply "as a matter of law," and the 1-hour designations and classifications--established for the circumstances present when the requirements were enacted--are the mechanism Congress identified for triggering the applicability of these requirements. Under this theory, Congress would have intended the standard to remain in place for purposes of control measures and NSR requirements, as discussed above.

While the partial retention of the standard itself and the associated designations and classifications would be the mechanism used to retain the specified obligations, we would need to promulgate regulations similar to those described in option 1 to ensure that it is clear for which purposes the standard is being retained.

b. Request for Comment. Both of these options would

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standard. See, e.g., Letter of December 5, 2002 from Michael P. Kenny, Executive Director, California Air Resources Board, to Jeffrey R. Holmstead, EPA Assistant Administrator for Air and Radiation. Available at: http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/.

achieve the same result--ensuring the continued applicability of certain control requirements in subpart 2 and ensuring continued improvement in air quality, while shifting the focus from modeling and other planning requirements for the 1-hour standard to analyses for the 8-hour standard. We solicit comment on which mechanism is preferable for accomplishing the overriding objective of preventing backsliding from statutory and SIP requirements while achieving a smooth transition to implementation of the new standard. In addition, EPA also solicits comment on whether to retain the limit in current 40 CFR section 50.9(b) that the 1-hour standard will not be revoked for any area until the 8-hour standard is no longer subject to legal challenge.

c. Other Possible Approaches for the Transition from the 1-Hour to the 8-Hour Standard.

The EPA considered other approaches for the timing of the revocation of the 1-hour ozone standard; these are discussed in a separate document available in the docket.[32]

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[32]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2002.

5. How will EPA ensure that the public knows which areas must continue provisions under the 1-hour SIPs if EPA revokes the 1-hour standard?

The EPA would promulgate regulatory provisions identifying the obligations that areas remain subject to and identifying the areas. If EPA ultimately chooses to revoke the 1-hour standard and the associated designations and classifications shortly after designations for the 8-hour standard (as proposed below), EPA would ensure that there are provisions in the Code of Federal Regulations (CFR) that continue to define the boundaries for those areas. The reason for this is that boundaries for 8-hour ozone nonattainment areas may not be coextensive with those for the 1-hour standard, and EPA would need to make clear which areas or portions of areas must continue to implement obligations due to their 1-hour classification.

D. Should prescribed requirements of subpart 2 apply in all 8-hour nonattainment areas classified under subpart 2, or is there flexibility in application in certain narrowly defined circumstances?

1. Background

The 1990 CAA Amendments overhauled the CAA's requirements for ozone nonattainment areas and, in doing so,

specified new mandatory measures for many areas. The new approach embodied in subpart 2 was to classify areas according to the severity of their pollution. Areas with more serious ozone pollution were allowed more time to meet the standard - but were required to adopt more numerous and stringent measures depending on their classification. Congressional proponents of this approach argued that specifying mandatory measures in the statute was necessary because States and EPA, prior to 1990, had failed to ensure that SIPs achieve steady reasonable progress in reducing emissions or to require readily available measures that were cost effective and needed to meet the standard.

Mandatory subpart 2 requirements for moderate and higher-classified areas include, for example, specific ROP requirements (including a 15 percent VOC reduction for moderate and above areas), basic I/M programs, a requirement that sources subject to NSR obtain emissions offsets at a ratio of 1.15-to-1, and RACT for NO_x sources as well as VOC sources. Serious and severe areas are subject to additional measures such as further ROP requirements, applicability of NSR to smaller sources, enhanced I/M, and applicability of RACT to smaller sources. (Appendix A presents a summary comparison of measures under subparts 1 and 2.)

For the proposed 8-hour ozone implementation strategy, EPA has examined the issue of mandatory measures from both legal and policy standpoints. The EPA's legal view is guided by the Supreme Court decision. The Court held that Congress drastically limited EPA's discretion on whether the mandatory requirements of subpart 2 will apply to 8-hour areas by concluding that the classification scheme of subpart 2 applied for purposes of a revised ozone NAAQS. ATA I, 175 F3d at 1048-1050.

As discussed elsewhere, the Supreme Court decision states that subpart 2 provides for classification of areas under the 8-hour standard. With respect to the requirements of subpart 2, the Supreme Court stated, "The principal distinction between Subpart 1 and Subpart 2 is that the latter eliminates regulatory discretion that the former allowed." Whitman 121 S.Ct. at 918. The Court went on to state, "Whereas Subpart 1 gives the EPA considerable discretion to shape nonattainment programs, Subpart 2 prescribes large parts of them by law." Id. The Court also stated, "EPA may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion." Id. 918-919.

Once an area is classified under subpart 2, the subpart

2 requirements apply. The EPA may have some limited ability to change or limit subpart 2 controls, consistent with the statutory language, but EPA cannot broadly waive those requirements. For example, EPA may have some flexibility to modify regulatory requirements for programs such as NSR (discussed elsewhere in this proposed rulemaking). Furthermore, subpart 2 provides discretion to EPA in implementing certain provisions already, such as waivers for stage II vapor recovery, NO_x RACT and NO_x NSR. In addition, case law may provide EPA with some flexibility to waive federally applicable requirements on a case-by-case basis where application of those requirements would produce an "absurd result."

With respect to policy considerations, some commenters at public meetings or in written submissions to EPA have expressed the view that mandatory measures are needed to ensure actions are taken, but a number of commenters have raised concerns. These include whether mandated VOC controls will be appropriate for all areas in the future, and whether mandatory measures are appropriate in areas projected to attain in the near term. A number of commenters recommended that EPA allow for flexibility in implementing the 8-hour ozone standard and not require

mandatory measures, such as local VOC measures, where they would not be very effective in achieving attainment of the standard. In many cases, particularly for areas that would be new nonattainment areas under the 8-hour standard, region-wide NO_x controls and national controls on mobile sources are predicted to greatly reduce the areas' ozone levels and to bring many into attainment without additional local emission controls.

Although a number of comments were received on the issue of flexibility, many commenters on this issue took the position that they would prefer areas to be classified under subpart 1 rather than subpart 2. Some commenters did recommend that EPA make the argument that new information about the relative benefits of NO_x and VOC control would lead to allowing more tailored controls for a number of areas, rather than the one-size-fits-all approach of subpart 2. However, commenters did not suggest how the CAA could be interpreted to allow the flexibility they were advocating for the mandatory requirements of subpart 2. Other commenters argued that the subpart 2 measures are mandatory under the CAA for areas classified under subpart 2 and that the CAA does not provide flexibility to waive those requirements.

Regarding the VOC/NO_x issue, ~~EPA~~we observe~~s~~ that scientific understanding of ozone pollution and the impact of control strategies has improved over time. Prior to 1990, the main focus of ozone control strategies was VOC control. Since then, scientific studies have more clearly recognized the role of NO_x, biogenic emissions, and transport of ozone and NO_x in ozone nonattainment. In response, EPA's ozone strategy for the 1-hour standard evolved to put greater emphasis on controlling NO_x in addition to VOC and to require control of NO_x emissions that contribute to interstate ozone problems.

~~The EPA~~We recognize~~s~~ that the relative effectiveness of VOC and NO_x controls will vary from area to area, depending significantly upon VOC/NO_x ratios in the atmosphere. Current scientific information shows that VOC reductions will reduce ozone in urban areas and in other areas where there is excess NO_x available for reaction. Ozone levels in areas that are less urban and have lower NO_x emissions, or that have high biogenic VOC levels, may be more sensitive to NO_x control and less sensitive to VOC control. Because ozone formation is greatly affected by meteorological conditions and source/receptor orientation, ozone formation may be limited by either VOC or NO_x concentrations at

different times and locations within the same area.

In order to support the approach proposed below, ~~EPA~~we solicit~~s~~ relevant technical information on this issue from States and others.

2. Approach being proposed

In line with the legal interpretation above, ~~EPA is~~we are proposing that subpart 2 requirements would apply to each area classified under subpart 2 consistent with the area's classification. However, today's proposal contains several features intended to provide States with flexibility on the measures required to be included in SIPs for 8-hour areas.

First, as explained in the section on classifications above, proposed classification option 2 would result in a number of areas being classified under subpart 1 rather than under subpart 2. Second, for both classification options, ~~EPA is~~we are proposing an incentive feature that would allow areas to qualify for a lower classification with fewer mandatory requirements if the area could show it will meet the standard by the deadline for the lower classification. This would, for example, allow any area projected to attain by 2007 based on existing federal measures and any State or local measures approved into the SIP to be classified as

marginal and to avoid subpart 2 mandatory measures--some of which may be significant--that apply to higher classifications.

Under either of ~~EPA's~~our proposed classification frameworks, a majority of potential 8-hour areas would not be subject to significant subpart 2 mandatory measures because they would be classified marginal or lower. Based on ~~EPA's~~our analysis of hypothetical nonattainment areas, there would be fewer than 10 potential 8-hour nonattainment areas classified "serious" or above, and these areas already are implementing requirements applicable to serious or above areas for the 1-hour standard. Therefore, the main impact of subpart 2 mandatory measures in 8-hour implementation would be on (1) areas that are classified as moderate, and did not have to meet moderate or above requirements for the 1-hour standard, (2) areas classified as moderate or above that would be subject to ROP requirements for the 8-hour NAAQS, and (3) new counties or areas included as part of a serious or higher classified nonattainment area.

As a third flexibility mechanism, ~~EPA is~~we are proposing to consider allowing case-by-case waivers when sufficient evidence is presented that application of a specific requirement in a particular area would cause absurd

results. Evidence of an absurd result might, for example, include a modeled demonstration that future VOC reductions required under subpart 2 for a particular area would actually cause ozone to increase more than a de minimis amount and therefore increase the amount of NO_x emissions reductions needed for the attainment demonstration. Such a showing would also have to account for the potential benefits of the mandated controls in downwind areas in determining whether on the whole the application of the subpart 2 measure would produce an absurd result.

~~The EPA~~We believe~~s~~ that absurd results will happen only rarely in those cases where application of the requirement in that area would thwart the intent of Congress in enacting the relevant provisions of the CAA. In such cases, EPA may be able to provide limited relief to the area, but only to the degree needed to protect Congressional intent. For example, ~~EPA~~we believe~~s~~ that the purpose of the 15 percent VOC ROP requirement is to ensure that areas make progress cleaning up their air and moving toward their goal of attainment in the first 6 years following the emissions baseline year. If an area could demonstrate that reductions in VOC would provide no progress toward attaining the standard, EPA may be allowed to interpret the statute to

allow for reduction in NO_x emissions instead. The EPA could not, however, simply waive the requirement for the area to meet the ROP goals of the CAA. Moreover, it would not be sufficient for the area to show that VOC reductions would be less beneficial than NO_x reductions. While one might contend that such a result is not the most logical result, it is not absurd. The above example is a simplistic example--application of the absurd results test in any specific situation would likely be more complex. In any specific situation, ~~EPA~~we would need to consider all of the facts in light of various statutory provisions. For example, ~~EPA~~we would need to consider that another goal of the SIP provisions in the CAA is to mitigate transport of ozone (and ozone precursors). Therefore, in determining whether there is an "absurd result," ~~EPA~~we would not only need to consider the implications for the specific area asserting an absurd result, but also the effects on downwind areas.

A State attempting an absurd results demonstration would have to work very closely with EPA to ensure that the demonstration passes the highest standards of technical credibility. If ~~EPA~~we had information that the agency believes supports an absurd results showing, ~~EPA~~we would

make that information available to the State. The State would, of course, have to subject this demonstration to the same public process carried out for the SIP submission itself prior to submission to EPA of the SIP containing the demonstration. In no way would this waiver exempt an area from the requirement to demonstrate attainment by the attainment date or to demonstrate RFP toward attainment consistent with the area's classification. ~~The EPA~~We would have to review the State's demonstration as to whether the result is "absurd" in light of the particular statutory requirement at issue and within the context of the statute as a whole. Simply because a State may demonstrate an absurd result for purposes of meeting one statutory provision, such as the requirement for a 15 percent VOC reduction within 6 years after a base year, this does not imply that some other provision of the CAA that requires VOC reductions is automatically considered "absurd."

3. Other Approaches Considered

~~The EPA~~We considered a number of other options for allowing additional flexibility for subpart 2 requirements. These other options that were considered but are not being proposed are described in a separate document available in

the docket.[33]

| ~~F~~E. What is the required timeframe for obtaining emissions reductions to ensure attainment by the attainment date?

Section 172(c)(2) of the CAA requires that emissions reductions needed for attainment be phased in such that RFP toward attainment is achieved. For areas classified as moderate under subpart 2, their attainment date would be as expeditiously as practicable but no later than 6 years after the date of classification. Their ROP requirement would be at least a 15 percent VOC emissions reduction from the base year to be achieved no later than 6 years after the base year. However, if the area needed more than 15 percent VOC reductions in order to demonstrate attainment, then any additional reductions would also have to be achieved by the area's attainment date.

States should be aware of the consequences of failing to implement the control measures necessary for attainment sufficiently far in advance of the attainment date. For areas covered under subpart 2, section 181(a)(5) of the CAA

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[33]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, | NC. ~~January~~March 2003.

does allow for up to two 1-year attainment date extensions in certain circumstances. ~~The EPA is~~We are proposing how those extension provisions would be implemented elsewhere in this notice under the discussion of attainment dates. To obtain the first of the 1-year extensions, the CAA basically requires that the area be meeting the level of the standard in the attainment year itself, even if the area has not actually attained considering the most recent 3 years of data. Thus, the States should ensure that the emissions reductions be implemented to ensure that ozone levels for the ozone season preceding the attainment date are below the level of the standard. If an area does not meet the eligibility requirements for a 1-year extension (as proposed elsewhere in this notice) in the attainment year, then the area would not be eligible for an attainment date extension, and EPA would have an obligation to reclassify the area to a higher classification ("bump-up"). A marginal area with an attainment date 3 years after its nonattainment designation that fails to attain would be subject to bump-up to at least moderate, and would then have to prepare a plan to attain within 3 years afterward (6 years after their nonattainment designation).

There is further discussion of this situation as it

relates to the 1-hour ozone standard in the General Preamble of April 16 1992 (57 FR 13498, 13506); this discussion may have some applicability to the 8-hour standard.

Areas covered under subpart 1 are also able to obtain up to two 1-year extensions of the attainment date (see section 172(a)(2)(C)). There is no provision for bump-up in classification similar to that under subpart 2. However, if an area fails to attain, section 179 of the Act provides that EPA publish a finding that the area failed to attain. The State then must submit within one year after that publication a revision to the SIP that provides for attainment within the time provided under section 179. Section 179 also provides that the SIP revision must also include any additional measures that EPA may prescribe.

~~G~~F. How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?

1. Background.

Although much progress has been made over the last decade to improve air quality, many States contain areas that have yet to attain the 1-hour ozone standard and/or that are violating the 8-hour ozone standard. Some of these areas are significantly affected by interstate ozone

transport from upwind areas. Wind currents can transport ozone and NO_x, a primary precursor to ozone, long distances, affecting multiple States downwind of a source area. ~~Legal and equity issues result when failure to control upwind sources creates a need for greater emissions reductions from local sources in order for a downwind area to achieve the ambient air quality standard. In some cases, a downwind area may not be able to attain the ozone standard until the transported emissions are controlled.~~We recognize that this type of interstate transport can make it difficult - or impossible - for some States to meet their attainment deadlines solely by regulating sources within their own boundaries.

The 1990 Amendments to the CAA reflect ~~general~~Congress' awareness ~~by Congress~~ that ozone is a regional, and not ~~merely~~solely a local, problem. Section 110(a)(2)(D) provides ~~one of the most~~an important tool~~s~~ for addressing the problem of transport. ~~This provision~~It provides that a SIP must contain adequate provisions ~~prohibiting the State's~~to prohibit sources in a State from emitting air pollutants in amounts that ~~will~~ contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. Section 110(k)(5) authorizes EPA to find

that a SIP is substantially inadequate to meet any CAA requirement, including the requirements of section 110(a)(2)(d). If EPA makes such a finding, it must require the State to submit, within a specified period, a SIP revision to correct the inadequacy. The CAA further addresses interstate transport of pollution in section 126, which authorizes ~~each~~any State to petition EPA for a finding designed to protect ~~that entity~~the State from significant upwind sources of air pollutants from other States.

In the past several years, ~~EPA~~we ha~~s~~ve conducted two rulemakings to control interstate ozone transport in the eastern U.S. In 1998, EPA issued the NO_x SIP Call, which requires certain States in the eastern U.S. to meet ~~S~~statewide NO_x emissions budgets (63 FR 57356, October 27, 1998.) State programs to implement the rule have focused on reducing emissions from electric power generators and large industrial emitters. In addition, in response to petitions submitted by several northeastern States under section 126 ~~of the CAA~~, EPA issued a separate rule (usually known as the Section 126 Rule ~~which~~) to establish~~ed~~ Federal control requirements for certain electric power generators and industrial boilers and turbines in upwind States (64 FR

28250, May 25, 1999 and 65 FR 2674, January 18, 2000). For both rules, the compliance date for achieving the required NO_x reductions is May 31, 2004. These two NO_x transport rules overlap considerably, with the NO_x SIP Call being the broader action affecting more States. All ~~of~~ the States affected by the Section 126 Rule are covered by the NO_x SIP Call. Therefore, ~~EPA~~we coordinated the two rulemakings and established a mechanism ~~in~~under which the Section 126 Rule ~~whereby that rule~~ would be withdrawn for sources in a State where EPA has approve~~d~~d a SIP meeting the NO_x SIP Call.[34] ~~In~~ Significantly, in both the NO_x SIP Call and the Section 126 Rule, EPA made determinations of whether upwind sources are significantly contributing to downwind nonattainment problems under both the 1-hour and 8-hour ozone standards. In the final SIP call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards. ~~Under the Section 126 Rule, more States and sources are affected based on the 8-~~

[34]As a result of court actions, certain circumstances upon which the Section 126 Rule withdrawal provision was based have changed. The compliance dates for the Section 126 Rule and the NO_x SIP Call have been delayed and the NO_x SIP Call has been divided into two phases. ~~The EPA is~~We are currently conducting a rulemaking to update the withdrawal provision so that it will operate appropriately under these new circumstances.

~~hour standard than the 1-hour standard. The EPA, however, stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard. The EPA will be addressing the 8-hour stays since On December 18, 2002, EPA responded to the one issue the D.C. Circuit Court ordered EPA to reconsider regarding the 8-hour ozone NAAQS and reaffirmed the 8-hour ozone standard (68 FR 614 (January 6, 2003) Now that the litigation on the 8-hour standard has been resolved, EPA intends to take action to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. These would then provide the initial basis for dealing with ozone transport as part of the~~[35] Thus, unlike in the past, States affected by transport can develop their new ozone implementation ~~of the 8-hour standard.~~

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[35]The Agency stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard.[Cite] Recently, however, the Administrator signed a final rule on the UV-B issue and reaffirmed the 8-hour ozone standard (68 FR 614 (January 6, 2003)), which was remanded to EPA in ATA I, 175 F.3d 1027. Having now reaffirmed the 8-hour standard, the Agency plans to take action in the near future to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. Such action would provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.

plans with the knowledge that the issue of interstate transport has already been addressed "up front." This approach will provide these States with certainty that they will benefit from substantial emission reductions from upwind sources and give them significantly improved boundary conditions that they can rely on as they work to identify additional emission reductions they will need to include in a local area's attainment SIP.

In providing their views to EPA on the 8-hour ozone implementation rule, however, the Ozone Transport Commission (OTC) and other State commenters have ~~told EPA that further~~argued that the NO_x SIP Call and the Section 126 rule are not fully adequate. In their view, additional steps are needed to reduce interstate transport of ozone and NO_x to assist downwind areas in meeting the 8-hour ozone standard. ~~T~~In particular, these commenters ~~voiced~~have expressed continued concern about upwind emissions from power plants and other major sources and transported pollution from upwind cities. ~~These commenters have urged EPA to ensure that interstate transport of ozone and NO_x is addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know what reductions will be required for purposes of reducing interstate pollution~~

~~transport when they decide the quantity of emissions reductions needed and specific measures to be included in a local area's attainment SIP.~~

2. The EPA's ~~Proposed~~Anticipated Approach.

~~The EPA~~We agree~~s~~ that transport of ozone and its precursors should be dealt with "up front." As described above, EPA ~~in 1998 promulgated the NO_x SIP call and took action on the section 126 petitions~~has already taken two actions to define what States within the SIP call region must do to address the transport of ozone and NO_x for purposes of ~~both~~ the ~~1-hour and~~ 8-hour ~~standards. In response to questions raised about whether those actions were sufficient, EPA plans to conduct updated analyses to examine whether residual~~standard.

The Agency also notes, however, that the President recently proposed legislation known as the Clear Skies Act that, among other things, would achieve significant reductions - beyond those required under the SIP Call and the Section 126 Rule - in the regional transport of NO_x, an ozone precursor. Detailed modeling by EPA for the year 2010 shows that the 2008 Phase I NO_x limits in the Clear Skies Act would reduce maximum 8-hour ozone levels in many parts of the eastern U.S., including a number of areas likely to

be designated nonattainment for the 8-hour standard. The modeling results are available on the web at www.epa.gov/clearskies.

Although the additional NO_x reductions required under Clear Skies would make it easier for many nonattainment areas to meet the 8-hour standard, the Agency has not completed an assessment of whether such reductions are warranted under the transport provisions of the Act. We intend to investigate the extent, severity and sources of interstate ozone transport that will exist after the NO_x SIP ~~call is implemented will significantly contribute to nonattainment~~Call and the Section 126 rule are implemented in 2004. The Agency believes that any additional requirements for reducing the transport of ozone or ozone precursors should be considered along with the need to reduce interstate pollution transport that contributes to unhealthy levels of $PM_{2.5}$ in downwind areas. ~~If, based on these analyses, EPA determines that significant transport would still exist, EPA would require~~Under this approach, any additional ~~reductions to address such significant transport.~~reduction in ozone transport would be accomplished through legislation such as Clear Skies or through a separate rulemaking, not through the 8-hour ozone

implementation rule.

As described in the Federal Register actions for the NO_x SIP call and section 126 rulemakings, ~~EPA~~we believe~~s~~ that ~~it~~EPA has ~~the~~ authority to define what States need to do to address interstate transport in advance of decisions regarding the designation of areas and in advance of the submission of SIPs to comply with the section 110 requirements for the 8-hour ozone standard. ~~[THE REMAINDER OF THIS PARAGRAPH IS UNDERGOING REVISION] The EPA is contemplating whether to~~The EPA may consider the issue of ozone transport in the context of a possible transport rulemaking that could address the transport of $PM_{2.5}$ precursors, including NO_x, since NO_x affects ambient concentrations of both $PM_{2.5}$ and ozone. If such a rulemaking is undertaken~~, EPA would conduct further~~ and analyse~~i~~s of ozone transport ~~that~~warrants, the rule could ~~result in~~include further requirements beyond the existing NO_x SIP Call. ~~In the analyses, EPA would take into account the future NOx reductions that will be provided by the Tier 2 motor vehicle standards, the heavy-duty diesel engine standards, and other Federal regulations.~~ Addressing $PM_{2.5}$ and ozone transport together in such a rulemaking would provide an opportunity for the coordination of control

efforts to help achieve attainment of both the $PM_{2.5}$ and 8-hour ozone standards, both of which will rely in part on control of pollutants transported across State boundaries. ~~The EPA~~We would welcome ~~the~~ input from States and other interested parties in such a rulemaking--if undertaken--as to how to deal with ozone transport effectively and equitably and on the technical and other issues that will have to be confronted as part of an evaluation of what further steps should be taken beyond the existing NO_x SIP Call to deal with ozone transport.

~~The EPA further notes that the proposed CSA, if enacted, would significantly reduce power generator NO_x emissions that EPA modeling shows will affect regional ozone levels after the NO_x SIP Call. The EPA modeling for the year 2010 shows that the 2008 Phase I NO_x limits on power generators in the proposed CSA would reduce maximum 8-hour ozone levels in many parts of the eastern U.S., including a number of areas likely to be designated nonattainment for the 8-hour standard. The modeling results are available on the web at www.epa.gov/clearskies.~~

~~Regardless of whether Congress enacts the CSA in a timely manner, the CAA requires States to develop SIPs that provide for attainment by deadlines in the CAA and requires~~

~~States to have implementation plans that prohibit emissions that contribute significantly to nonattainment in other States.~~

3. Other Concerns about Transport.

~~[FOLLOWING SENTENCE WILL BE REVISED] The EPA~~We realizes that even if it were to pursue a new national transport rule ~~is pursued by EPA~~, attainment demonstrations for some areas would continue to be complicated by the effects of ozone and transport from upwind sources and other nonattainment areas in cases where upwind source controls are scheduled for implementation after the downwind area's attainment date (e.g., 2007 attainment date).

Downwind areas could be in one of two situations. In the first situation, an area might be receiving such high levels of transported ozone or ozone precursors that even if it reduced its emissions dramatically (e.g., totally eliminated its own emissions), the incoming ozone and precursors would be sufficient to continue to cause violations of the standard beyond the applicable attainment date. In the second situation, the area might be able to achieve additional local reductions sufficient to demonstrate attainment. In this second case, the question arises as to whether it is equitable to require those

reductions or to allow more time for the reductions in the "upwind" area to take place.[36]

~~The EPA~~We solicit~~s~~ comment on how to address this issue. ~~The EPA~~We believe~~s~~ that a subpart 1 area could be granted a later attainment date if warranted considering transport. For areas classified under subpart 2, the statute provides no express relief for these situations. The area does have the option of requesting to be classified to the next higher classification. Thus, where the demonstration of attainment is complicated by transport between two areas of different classifications, the State is still responsible for developing and submitting demonstrations which show that the standard will be attained by the applicable date. In other words, the State must provide for sufficient emissions reductions on a schedule that will ensure attainment in its area.

One approach would be for States to work together in a

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[36]The CAA's requirement for reasonably available control measures (RACM) in section 172(c)(1) does require the SIP to include RACM; ~~EPA~~we ha~~s~~ve noted in policy elsewhere that a measure is RACM if it is technologically and economically feasible and if it would advance the attainment date. Thus, if there are measures available in the nonattainment area that would advance the attainment date--even if attainment is likely at a later date due to upwind emission reductions that occur later--then the CAA requires such measures to be in the SIP.

collaborative process to perform the necessary analyses to identify appropriate controls ~~which will~~that provide for attainment throughout the multi-State area. ~~The EPA~~We believe~~s~~ that the wording in sections 172(c)(1) and 182(b)(1)(A)(i) require the State to develop a plan providing such emissions reductions. States working together in a collaborative process could perform a comprehensive assessment of the impacts of all control measures being implemented in both the local and upwind areas. The analysis may show the extent to which the downwind area is dependent on upwind strategies while fully meeting its own requirements associated with its classification. And upwind areas may provide a comprehensive assessment of the impacts of all control measures being implemented on the downwind areas.

4. Other Options Considered.

~~The EPA~~We considered a number of other options and approaches for addressing transport. These other options that were considered but are not being proposed are described in a separate document available in the docket.[37]

[37]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality

~~H~~G. How will EPA address transport of ground-level ozone and its precursors for rural nonattainment areas, multi-State nonattainment areas, areas affected by intrastate transport, and international transport?

1. Rural transport nonattainment areas.

Section 182(h) recognizes that the ozone problem in a rural transport area is almost entirely attributable to emissions from upwind areas. Therefore, the only requirements for the rural area are the minimal requirements specified for areas expected to attain within 3 years of designation, the assumption being that the controls in the upwind area will solve the remaining nonattainment problem in the rural transport area as well. In these cases, the timing for attainment will depend on the schedule for adoption and implementation of control measures in the upwind areas.

2. Multi-State Nonattainment Areas.

Section 182(j)(2) for multi-State nonattainment areas (i.e., portions of the nonattainment area lie in two or more States) recognizes that one State may not be able to

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Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~January~~March 2003.

demonstrate attainment for the portion of the nonattainment area within its borders if other States containing the remaining portions of the nonattainment area do not adopt and submit the necessary attainment plan for their portions of the nonattainment area. In such cases, even though the area as a whole would not be able to demonstrate attainment, the sanction provisions of section 179 shall not apply in the portion of the nonattainment area located in a State that submitted an attainment plan.

Section 182(j) defines a multi-State ozone nonattainment area as an ozone nonattainment area, portions of which lie in two or more States. Section 182(j)(1)(A) and (B) set certain requirements for such areas. First, each State in which a multi-State ozone nonattainment area lies, must take all reasonable steps to coordinate the implementation of the required revisions to SIPs for the given nonattainment area [section 182(j)(1)(A)]. Next, section 182(j)(1)(B) requires the States to use photochemical grid modeling or any other equally effective analytical method approved by EPA for demonstrating attainment. The EPA is prevented by section 182(j) from approving any SIP revision submitted under that section if a State has failed to meet the above requirements.

Pursuant to section 182(j)(1)(A), States that include portions of a multi-State ozone nonattainment area are required to develop a joint work plan as evidence of early cooperation and integration. The work plan should include a schedule for developing the emissions inventories, and the attainment demonstration for the entire multi-State area. Each State within a multi-State ozone nonattainment area is responsible for meeting all the requirements relevant to the given area. Care should be taken to coordinate strategies and assumptions in a modeled area with those in other, nearby modeled areas in order to ensure that consistent, plausible strategies are developed.

3. Intrastate transport

Several State air agency representatives have voiced a concern about intrastate transport of ozone and precursor emissions and have asked EPA to address this concern. One State, for instance, notes that it has upwind areas that are affecting downwind areas and in some cases may be preventing a downwind area from attaining the standard by its statutory date.

~~The EPA~~We believe~~s~~ that the CAA requires individual States, as an initial matter, to deal with intrastate transport. ~~The EPA~~We realize~~s~~ that some States are

structured with semi-autonomous local air agencies that are empowered to address major elements of the SIP process, including preparation of the attainment demonstration. In those situations, the CAA provides that the State retain sufficient backstop authority to ensure all areas within its borders reach attainment, (110(a)(2)(E)). A State could, of course, recommend designation of nonattainment areas that are large enough to encompass upwind and downwind areas of the State and require that the individual jurisdictions work together on an attainment plan that accounts for transport and results in attainment by the attainment date for the entire nonattainment area. Or a State could require the individual agencies to work together in the same manner as multi-State organizations. In this case, there would be separate nonattainment areas with independent agencies expected to work together to address transport among the nonattainment areas. To facilitate this process, the State could require the agencies to sign a memorandum of agreement which describes the technical and administrative approach for performing the modeling analysis and identifying the appropriate controls measures. Upon a State's request, ~~EPA~~we would be willing to provide support for these activities.

~~The EPA~~We also solicit~~s~~ comments on other ways of addressing intrastate transport within the context of the Clean Air Act provisions.

4. International Transport.

a. International Transboundary Transport. International transboundary transport of ozone and ozone precursors can contribute to exceedances of the NAAQS. It is likely that the international transport of air pollutants will affect the ability of some areas to attain and maintain the 8-hour ozone NAAQS. As States and EPA implement control strategies and national emission reduction programs, the impact of high background levels emanating from outside the U.S. may play a larger role in future attainment demonstrations. ~~The EPA~~We ha~~s~~ve developed an information document on "International Transboundary Influences and Meeting the NAAQS," which is located in the Docket to this proposed rulemaking. This document provides information on efforts with Canada and Mexico to address transboundary air pollution as well as additional information for intercontinental modeling work currently underway within EPA.

b. Section 179B and the SIP approval process. Section 179B of the CAA (International Border Areas), applies to nonattainment areas that are affected by emissions emanating

from outside the United States. This section requires EPA to approve a SIP for a nonattainment area if: it meets all of the requirements applicable under the CAA, other than a requirement that the area demonstrate attainment and maintenance of the ozone NAAQS by the applicable attainment date; and the affected State establishes to EPA's satisfaction that the SIP would be adequate to attain and maintain the ozone NAAQS by the applicable attainment date but for emissions emanating from outside the United States. Further, any State that establishes to the satisfaction of EPA that the State would have attained the 8-hour ozone NAAQS, but for emissions emanating from outside the U.S., would not be subject to the attainment date extension provided in section 181(a)(5), the fee provisions of section 185, and the bump-up provisions for failure to attain for 8-hour ozone NAAQS specified in section 181(b)(2).[38]

In demonstrating that an area could attain the 8-hour ozone NAAQS but for emissions emanating from outside the U.S., approved EPA modeling techniques should be used to the best extent practicable. An emission inventory incorporating vehicle emissions released in the U.S. by

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[38]The statute contains a typographical error referring to section 181(a)(2) instead of 181(b)(2).

foreign vehicles, i.e., those vehicles registered in the adjacent foreign country, must be completed by the States before modeling the U.S. side only and attempting to demonstrate attainment.[39] ~~The EPA~~We recognize~~s~~ that adequate data may not be available for mobile and stationary sources outside the United States. Therefore, modeling, per EPA's "modeling guidance" described elsewhere in the section on attainment demonstrations, may not be possible in all cases. Because very few areas are likely to be affected by this provision, EPA will determine on a case-by-case basis whether the State has satisfactorily made the required demonstration. The State is encouraged to consult with the EPA Regional Office in developing any alternate demonstration methods. Methods that the State may want to consider include: using ozone episodes that do not involve international transport of emissions for modeling (see guidance document entitled "Criteria for Assessing Role of Transported Ozone/Precursors in Ozone Nonattainment Areas"),

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[39]As noted elsewhere in this notice, the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) has established basic emission inventory requirements for all areas of the country and generally requires periodic inventories of emissions that actually occur in the year of the inventory in the U.S. area of interest. This would include emissions from foreign-registered vehicles.

running the model with boundary conditions that reflect general background concentrations on the U.S. side, analyzing monitoring data if a dense network has been established, and using receptor modeling. States should confer with the appropriate EPA Regional Office to establish appropriate technical requirements for these analyses.

5. Additional ways of addressing transport

Additional approaches to address transport are discussed in the section~~s~~ on classifications~~ and RFP plans~~.

6. State-Tribal Transport

States have an obligation to notify Tribes as well as other States in advance of any public hearing(s) on their State plans that will significantly impact such jurisdictions. Under 40 CFR 51.102(6)(i), States must notify the affected States of hearings on their SIPs; this requirement extends to Tribes under 301(d) of the CAA and the TAR. 40 CFR Part 49. Therefore, affected Tribes that have achieved "treatment as States" status must be informed of the contents of such plans and the extent of documentation to support the plans. For example, in the case where the State models projected emissions and air quality under the SIP, the Tribes should be made aware of these modeling analyses. Tribes may wish to determine if

the tribal area has been affected by upwind pollution and whether projected emissions from the tribal area have been considered in the modeling analyses.

Generally, Tribal lands have few major sources, but in many cases, air quality in Indian country is affected by the transport--both long range and shorter distance transport--of pollutants. In many cases, Tribal nonattainment problems caused by upwind sources will not be solved by long-range transport policies, as the Tribes' geographic areas are small. Tribes are sovereign entities, and not political subdivisions of States. Strategies used for intrastate transport are not always available. Most of the strategies and policies used by States in dealing with short-range transport are not available to Tribes, e.g., requiring local governments to work together and expanding the area to include the upwind sources. Unlike Tribes, States can generally require local governments to work together, or make the nonattainment area big enough to cover contributing and affected areas. ~~The EPA~~We believe~~s~~ that it is also unfair to tribes to require disproportionate local regulatory efforts to compensate for upwind emissions. In many cases attainment could not be reached even if emissions from the Tribe were zero.

To address these concerns, ~~EPA~~we proposes to take comment on the following: EPA will review SIPs for their effectiveness in preventing significant contributions to nonattainment in downwind Tribal areas with the same scrutiny it applies to reviewing SIPs with respect to impacts on downwind States. Where a Tribe has "treatment in the same manner as States," EPA will support the Tribe in reviewing upwind area SIPs during the State public comment period.

~~I~~H. How will EPA address requirements for modeling and attainment demonstration SIPs when implementing the 8-hour ozone standard?

An attainment demonstration SIP consists of (1) technical analyses to locate and identify sources of emissions that are causing violations of the 8-hour NAAQS within nonattainment areas (i.e., analyses related to the emissions inventory required for the nonattainment area), (2) adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment, (3) commitments, in some cases, to perform a mid-course review, and (4) contingency measures required under section 172(c)(9) of the CAA that can be implemented without further action by the State or the Administrator to

cover emissions shortfalls in RFP plans and failures to attain. ~~The EPA is~~We are soliciting public comment on the following guidance. Associated with the attainment demonstration also are the RFP/ROP plans and the SIP submission concerning reasonably available control measures (RACM), for which ~~EPA is~~we are proposing rules elsewhere in this proposal.

1. Multi-pollutant assessments (one-atmosphere modeling[40])

Many factors affecting formation and transport of secondary fine particles (i.e., $PM_{2.5}$ components) are the same as those affecting formation and transport of ozone. For example, similarities exist in sources of precursors for ozone and secondary fine particles. Sources of NO_x may lead to formation of ozone as well as nitrates which contribute to the formation of secondary fine particles. Sources of VOC may contribute to ozone formation and may also be sources or precursors for organic particles. Presence of ozone itself may be an important factor affecting secondary particle formation. As ozone builds up, so do hydroxyl (OH)

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[40]Use of models that are capable of simulating transport and formation of multiple pollutants simultaneously. For example for ozone and fine particles, it is critical that the model simulate photochemistry, which includes interactions among the pollutants and their precursors.

radicals as a result of equilibrium reactions between ozone, water and OH in the presence of sunlight. OH radicals are instrumental in oxidizing gas phase SO_2 to sulfuric acid, which is eventually absorbed by liquid aerosol and converted to particulate sulfate in the presence of ammonia. Therefore, strategies to reduce ozone can also affect formation of secondary fine particles which contribute to visibility impairment.

Therefore, models and data analysis intended to address visibility impairment need to be capable of simulating transport and formation of both secondary fine particles and ozone. At a minimum, modeling should include previously implemented or planned measures to reduce ozone, secondary fine particles, and visibility impairment. An integrated assessment of the impact controls have on ozone, secondary fine particles, and regional haze provides safeguards to ensure ozone controls will not preclude optimal controls for secondary fine particles and visibility impairment.

The concept of modeling control impacts on all three programs is further strengthened by the alignment of the implementation process for ozone and secondary fine particles. As the dates for attainment demonstration SIPs begin to coincide, the practicality of using common data

bases and analysis tools for all three programs becomes more viable and encourages use of shared resources.

States that undertake multi-pollutant assessments as part of their attainment demonstration would assess the impact of their ozone attainment strategies on secondary fine particles and visibility or perform a consistent analysis for ozone, secondary fine particles, and visibility. To facilitate such an effort, ~~EPA~~we would encourage States to work closely with established regional haze Regional Planning Organizations (RPOs) and the jurisdictions responsible for developing $PM_{2.5}$ implementation plans. Though the CSA, if enacted as introduced, would provide substantial improvement in air quality for ozone, $PM_{2.5}$ and visibility, States are encouraged to follow EPA's lead and perform similar multi-pollutant assessments as part of their ozone attainment demonstrations, considering the programs that are in place at the time of the assessment. Multi-pollutant assessments are discussed elsewhere in this proposed rulemaking.

2. Areas with early attainment dates

Under section 182(a), marginal areas, which have an attainment date of only 3 years after designation, are not

required to perform a complex modeling analysis using photochemical grid modeling. Areas covered under either subpart 1 or 2 with ozone concentrations close to the level of the NAAQS (e.g., within 0.005 parts per million), will most likely come into attainment within 3 years after designation as nonattainment without any additional local planning as a result of national and/or regional emission control measures that are scheduled to occur. ~~The EPA~~We ha~~s~~ve good reason to believe these areas will come into attainment. Regional scale modeling for national rules, such as the NO_x SIP Call and Tier II motor vehicle tailpipe standards, demonstrates major ozone benefits for the 3-year period of 2004-2006. This period would be relevant for demonstrating attainment within 3 years of designation, assuming designations occur in early 2004. Many similar areas classified as marginal for the 1-hour ozone NAAQS in 1990 came into attainment within the initial 3-year period.

As an additional safeguard, if attainment demonstration modeling is performed using multi-State geographic areas, most of these areas with early attainment dates will be included in the modeling analyses conducted by areas with later attainment dates. This will provide an opportunity

for review of the impact control programs will have on areas with early attainment dates.

Experience with the 1-hour ozone attainment demonstrations has shown that 3 years is not enough time to perform the detailed photochemical grid modeling needed to develop the demonstration and complete the regulatory process needed to adopt and implement control measures sufficiently before the attainment date. It would not be reasonable to require these areas to expend the amount of resources needed to perform a complex modeling analysis given how close these areas are to meeting the level of the NAAQS. Therefore, ~~EPA~~we proposes~~s~~ that no additional modeled attainment demonstration would be required for areas with air quality observations close to the level of the standard as described above and where regional or national modeling exists and is appropriate for use in the area demonstrates that an area will attain the 8-hour standard within 3 years after designation. This proposal would apply for areas covered under either subpart 1 or subpart 2.

Areas with early attainment dates with air quality observations that are not close to the level of the NAAQS (as described above) and regional scale modeling for

national rules that demonstrates they will not be in attainment within 3 years of designation should consider requesting reclassification to the next higher classification. This reclassification would provide additional time for developing an attainment demonstration SIP and adopting and implementing the control measures needed.

3. Areas with later attainment dates

Areas with later attainment dates (more than 3 years after designation), regardless of whether they are covered under subpart 1 or subpart 2, would be required to do an attainment demonstration SIP. Local, regional and national modeling developed to support Federal or local controls may be used provided the modeling is consistent with EPA's modeling guidance, described below. Several States have invested considerable time and resources in regional 8-hour ozone modeling projects following this guidance. Since exceedances of the 8-hour ozone NAAQS are more pervasive than 1-hour ozone exceedances, ~~EPA~~we encourage~~s~~ multi-State applications of the modeling guidance. States should work together and leverage off work under development and resources spent on these projects. This will be most

beneficial in developing attainment demonstrations to achieve attainment.

4. Modeling guidance

Section 182 (b)(1)(A) requires ozone nonattainment areas to develop an attainment demonstration which provides for reductions in VOC and NO_x emissions "as necessary to attain the national primary ambient air quality standard for ozone." Section 172(c), requires areas covered under subpart 1 to demonstrate attainment. As noted above, if a subpart 1 area has an attainment date beyond 3 years of designation, ~~EPA~~we would require the State to develop an attainment demonstration.

Section 182(c)(2)(A) provides that for serious and higher-classified areas the "attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." A photochemical grid model should meet several general criteria for it to be a candidate for consideration in an attainment demonstration.[1] Note that, unlike in previous guidance (U.S. EPA, 1991), ~~EPA is~~we are not recommending a specific model for use in the attainment demonstration for

the 8-hour NAAQS for ozone. At present, there is no single model which has been extensively tested and shown to be clearly superior or easier to use than other available models. At this time, ~~EPA~~we do~~es~~ not anticipate that the next revision to 40 CFR part 51, appendix W will identify a "preferred model" for use in attainment demonstrations of the 8-hour NAAQS for ozone as provided in 40 CFR part 51, appendix W. Thus, States may choose from several alternatives.

The EPA's "DRAFT Guidance on the use of models and other analyses in attainment demonstrations for the 8-hour ozone NAAQS" provides a set of general requirements which an air quality model should meet to qualify for use in an attainment demonstration for the 8-hour ozone NAAQS.[41] These include having received a scientific peer review, being applicable to the specific application on a theoretical basis, and having an adequate data base to support its application. It is also important that past applications indicate model estimates are not likely to be

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[41] U.S. EPA, (May 1999), Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS, EPA-454/R-99-004, http://www.epa.gov/ttn/scram, (Modeling Guidance, File name: DRAFT8HR).

biased low and that the model is applied consistently with a protocol on methods and procedures. ~~The EPA~~We plan~~s~~ to finalize this guidance at the same time the final implementation rule is published. Comments on this document are solicited as part of this proposal.

The guidance describes how to apply air quality models. The output from such a model is used to support an attainment demonstration. The recommended procedure for applying a model includes developing a conceptual description of the problem to be addressed; developing a modeling/analysis protocol; selecting an appropriate model to support the demonstration; selecting appropriate meteorological episodes or time periods to model; choosing an appropriate area to model with appropriate horizontal/vertical resolution; generating meteorological and air quality inputs to the air quality model; generating emissions inputs to the air quality model; evaluating performance of the air quality model; and performing diagnostic tests. After these steps are completed, the model is used to simulate effects of candidate control strategies.

The guidance recommends procedures for estimating if a

control strategy to reduce emissions of ozone precursors will lead to attainment of the 8-hour NAAQS for ozone. It explains what is meant by a modeled attainment demonstration, a modeled attainment test, a screening test, and a weight of evidence determination. It also identifies additional data which, if available, should enhance the credibility of model results and results of other analyses used in a weight of evidence determination. States should work closely with the appropriate U.S. EPA Regional Office(s) in executing each step.

~~The EPA is~~We are planning to make substantial changes to the draft version of this document. Changes include: (1) the future year of emission estimates to model, (2) the recommended length of time period to model (i.e., up to full ozone season), and (3) the use of spatial fields of ambient concentrations as part of the "modeled attainment test."

~~The EPA~~We welcome~~s~~ public comments on the guidance at any time and will consider those comments in any future revision of the document. Comments submitted on the modeling guidance document should be identified as such and will not be docketed as part of this rulemaking, nor will a comment/response summary of these comments be a part of the

final 8-hour ozone implementation rule since they will not affect the rule itself. The final version of the guidance is scheduled for release by December 2003 and will be posted on EPA's web site (http://www.epa.gov/ttn/scram/).

5. Mid-course review (MCR)

A MCR provides an opportunity to assess whether a nonattainment area is or is not making sufficient progress toward attainment of the 8-hour ozone standard, as predicted in its attainment demonstration. The review utilizes the most recent monitoring and other data to assess whether the control measures relied on in a SIP's attainment demonstration have resulted in adequate improvement in air quality. ~~The EPA~~We believe~~s~~ that a commitment to perform a MCR is a critical element in an attainment demonstration that employs a long-term projection period and relies on weight of evidence. Because of the uncertainty in long term projections, ~~EPA~~we believe~~s~~ such attainment demonstrations need to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed.

A number of States have participated in a consultative

process with EPA, which resulted in the development of the 1-hour MCR guidance.[42] ~~The EPA is~~We are updating the 1-hour MCR policy and technical guidance to include 8-hour metrics and is soliciting comment on appropriate revisions; final MCR guidance incorporating 8-hour metrics will be available at the time ~~EPA~~we issue~~s its~~ our final implementation rule. States should consult with EPA prior to using a methodology other than the one developed through the public consultative process.

The procedure for performing a MCR contains three basic steps: (1) perform an administrative test (e.g., demonstrate whether the appropriate emission limits were adopted and implemented); (2) analyze available air quality, meteorology, emissions and modeling data and document findings; and (3) document conclusions regarding whether progress toward attainment is being made using a weight of evidence determination (which may or may not include new modeling analyses).

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[42]Memorandum of March 28, 2002, from Lydia N. Wegman and J. David Mobley, re: "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration." Located at URL: http://www.epa.gov/scram001/guidance/guide/policymem33d.pdf .

The EPA does not request that States commit in advance to adopt new control measures as a result of the MCR process. Based on the MCR, if EPA determines sufficient progress has not been made, EPA would determine whether additional emissions reductions are necessary from the State or States in which the nonattainment area is located or upwind States, or both. The EPA would then require the appropriate State or States to adopt and submit the new measures within a specified period. ~~The EPA~~We anticipate~~s~~ that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. Thus, States should complete the MCR 3 or more years before the applicable attainment date to ensure that any additional controls that may be needed can be adopted in sufficient time to reduce emissions by the start of the ozone season in the attainment year.

~~J~~I. What requirements for reasonable further progress should apply under the 8-hour ozone standard?

1. Background

Section 172(c)(2), which is located in subpart 1 of part D of title I, requires State plans for nonattainment

areas to require RFP. Section 171(1) of the CAA defines RFP to mean "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date."

Subpart 2 of part D of title I provides more specific RFP requirements for ozone areas classified under Section 181. (In general, ~~EPA~~we ha~~s~~ve used the term "RFP" as the more generic progress requirement, whereas it has used the term "rate of progress" or "ROP" to denote the specific subpart 2 progress requirements that are defined as specific percent reductions from a baseline emissions inventory.) In particular, it specifies the base year emission inventory upon which ROP is to be planned for and implemented, the increments of emission reductions required over specified time periods, and the process for determining whether the ROP milestones were achieved.

Subpart 2 does not specify ROP requirements for marginal areas. Section 182(b)(1)(A) mandates a 15 percent VOC emission reduction, accounting for growth, between 1990 and 1996 for moderate and above ozone nonattainment areas.

Furthermore, section 182(c)(2)(B) of the CAA requires each serious and above ozone nonattainment area to submit a SIP revision providing for an actual VOC emission reduction of at least 3 percent per year averaged over each consecutive 3-year period beginning in 1996 until the area's attainment date (the post-1996 ROP plan). Section 182(c)(2)(C) of the CAA allows for substitution of NO_x for VOC emissions reductions in the post-1996 ROP plan. The EPA's policy, the NO_x Substitution Guidance (December 15, 1993; available at http://www.epa.gov/ttn/oarpg/t1pgm.html), addresses the substitution of NO_x emissions reductions for VOC emission reductions. The baseline emission inventory for determining the required ROP reductions is specified as 1990.

The requirements for RFP under subparts 1 and 2, as described above, are the minimum required for an area. More reductions may be necessary for attainment within the nonattainment area or where the area contributes to a downwind area's nonattainment problem. Moreover, an upwind area that contributes to nonattainment in a downwind area may need more reductions in a shorter time in order for the downwind area to reach attainment by its required attainment date.

2. Proposed Features in General.

In developing an approach for addressing the RFP requirements for the 8-hour ozone standard, ~~EPA~~we proposes~~~~ the following:

-The same baseline year would be used both to address growth (in emissions, vehicle miles traveled (VMT) or otherwise) and to calculate the RFP target level.

-Emissions reductions from outside the nonattainment area up to 100 km for VOC and 200 km for NO_x (and Statewide if under a regional strategy) would be allowed consistent with EPA's existing December 1997 interim implementation policy for 1-hour ozone NAAQS.[43]

-For areas classified under subpart 2, the ROP requirements specified in subpart 2 would apply, namely a 15 percent VOC emission reduction, accounting for growth, in the first 6 years after the baseline year for moderate and above ozone nonattainment areas. In addition, for areas classified as serious and above, the ROP provisions in subpart 2 require a

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[43]Memorandum of December 29, 1997 from Richard D. Wilson to Regional Administrators, Regions I-X re "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS." Located at URL: http://www.epa.gov/ttn/oarpg/t1/memoranda/iig.pdf . The distances used resulted from FACA discussions cited earlier and generally represent transport of 1 to 2 days.

VOC or NO_x emission reduction of at least three percent per year averaged over each consecutive 3-year period beginning 6 years after the baseline year (specified as under the 1990 CAAA). Areas classified under subpart 2 as marginal, which are required to attain 3 years following classification, are subject only to such RFP as necessary to attain. ~~The EPA~~We believe~~s~~ the periods for RFP under subpart 2 for the 8-hour ozone NAAQS should run from the date of the baseline year under subpart 2, and would be equivalent to the periods under the 1-hour ozone NAAQS. Thus, the first 15 percent reduction would be required for the 6 year period starting from the last day (December 31) of the baseline year and the first 3-year period for the subsequent three percent per year emission reduction requirement in serious areas would begin 6 years after the last day (December 31) of the baseline year. The baseline issue is discussed in section 4 below.

3. For subpart 2 areas, should the initial 15 percent RFP requirement be limited to VOC emissions?

Currently, for many areas of the country, particularly in the Eastern U.S. outside major metropolitan areas, there is a greater need for NO_x reductions rather than VOC

reductions. However, under the prescribed requirements of the CAA, NO_x substitution is only allowed for the post-1996 ROP requirement (three percent per year averaged over 3 years), not for the initial 15 percent ROP requirement. ~~The EPA is~~We are proposing 2 options to address this issue.

a. Option 1. Continue to require 15 percent VOC reductions within 6 years after the baseline year for all areas designated moderate and above for the 8-hour ozone NAAQS. After 6 years, all serious and above areas would be required to achieve a nine percent reduction in VOC and/or NO_x emissions every 3 years, i.e., an average of three percent per year.

b. Option 2. For those areas that have approved 15 percent plans for their 1-hour ozone SIPs, an additional 15 percent VOC reduction is not necessary. Areas that are classified as moderate under the 8-hour standard that have already implemented their 15 percent plans under their 1-hour ozone SIPs would be considered to have met the statutory 15 percent requirement and RFP for the first 6 years from the baseline year would be covered under the more generic RFP requirements of subpart 1. Subpart 1 RFP requirements are discussed below. Areas that are classified as serious and

above under the 8-hour standard that have already implemented their 15 percent plans under the 1-hour ozone standard would have to include in their SIPs an additional RFP plan that would achieve an average of three percent per year of VOC and/or NO_x over each 3-year period out to their attainment year. ~~The EPA~~We recognize~~s~~ that it would be difficult to submit--within 2 or even 3 years after designation--a timely plan that provides for the first nine percent emission reduction within 3 years after nonattainment designation. Therefore ~~EPA~~, we propose~~s~~ to require under this option that an area classified serious or above submit its ROP plan within 2 years after designation that provides for 18 percent emissions reductions (VOC and/or NO_x) over the first 6 years from the baseline year and then submit within 3 years after designation an ROP plan that provides nine percent emission reductions (VOC and/or NO_x) over each of the next 3-year periods until the area's attainment date.

This option recognizes previous efforts by areas that submitted 15 percent plans as required under the 1-hour ozone NAAQS and provides flexibility to States to use a mix of NO_x and VOC reductions to meet the additional ROP/RFP

requirements. ~~The EPA~~We believe~~s~~ that the statute can be interpreted to require the mandatory 15 percent VOC reduction only once for a given area. Once 15 percent VOC reduction requirements have been met, an area would actually have to achieve greater emission reductions, i.e., an average of three percent per year, but could choose either VOC or NO_x reductions as appropriate. ~~The EPA~~We prefer~~s~~ this second option because it provides more flexibility for the ROP plan to be consistent with the area's needs in attaining the standard.

c. Other options that EPA considered. ~~The EPA~~We considered other options for addressing this issue that are not being proposed here; discussion of them appears in a separate document, available in the docket.[44] However, ~~EPA~~we solicit~~s~~ comments on potential other RFP options and what possible rationales--legal and scientific--might be used to justify other RFP options.

4. What baseline year should be required for the emission inventory for the RFP requirement?

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[44]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~January~~March 2003.

The baseline inventory for RFP (under subpart 2) is used as the starting point for the determination of a target level of emissions for the future year RFP and as the baseline from which creditable reductions are determined. ~~The EPA~~We currently anticipate~~s~~ designating nonattainment areas in 2004. Under the "Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) revised emissions inventories are required for the years 2002 and 2005; therefore, ~~EPA~~we propose~~s~~ to require use of the 2002 inventory as the baseline inventory for the RFP requirement. This would be the most recently available inventory at the time of designation. ~~The EPA~~We recently issued a memorandum identifying 2002 as the anticipated emission inventory base year for the SIP planning process to address the 8-hour ozone and the $PM_{2.5}$ standards.[45]

~~The EPA~~We considered other options for addressing this issue that are not being proposed here; discussion of them

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[45]Memorandum of November 18, 2002, from Lydia Wegman and Peter Tsirigotis, "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs." This document is available at the following web site: http://www.epa.~~gov/ttn/naaqs/ozone/ozonetech/o3imp8hr/o3imp8hr.htm.~~gov/ttn/oarpg/meta.442.1.2002baseinv.pdf.

appears in a separate document, available in the docket.[46]

5. Should moderate areas be subject to prescribed additional RFP requirements prior to their attainment date?

For areas initially classified moderate and higher under the 1-hour ozone standard, the baseline inventory was defined as 1990 in the CAA Amendments. Therefore, the 6-year period for the initial 15 percent ROP requirement ended in the same year as the attainment date for moderate areas, viz., 1996. For areas classified moderate and higher under the 8-hour ozone standard, however, ~~EPA is~~we are proposing that the 15 percent ROP target level of emissions would be calculated for the 6-year period after the 2002 baseline year, i.e., 2003-2008. Moderate areas would be required to meet an attainment date no later than 6 years after the area is designated nonattainment for the 8-hour standard. If the effective date of designation of nonattainment areas is, for instance, May 15, 2004, the attainment date would be May 15, 2010. This leaves approximately a one and a half year gap between the end of the 6-year period for the 15 percent ROP

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[46]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~January~~March 2003.

requirement (i.e., December 31, 2008) and the attainment date. If ~~EPA~~we were to also require moderate areas to obtain an additional three percent per year reductions beyond 2008 for the one and a half additional years out to 2010, the ROP requirement would be more than what ~~EPA~~we believe~~s~~ Congress intended for moderate areas under subpart 2. Additional three percent per year reductions were only required for serious and higher classified 1-hour ozone nonattainment areas. ~~The EPA is~~We are proposing that the only specific ROP requirement applicable for moderate areas is the 15 percent VOC requirement between the end of 2002 and the end of 2008. However, section 172(c)(2) also applies, requiring areas to meet RFP generally. Therefore, a moderate area would still also have to provide any additional emissions reductions-VOC and/or NO_x--needed to provide for attainment by the area's attainment date. In proposing this approach, ~~EPA is~~we are interpreting the subpart 1 RFP requirement to mean that the area must achieve whatever further reduction is needed for attainment in the remaining period prior to the attainment date (2009 and 2010).

~~The EPA is~~We are proposing that serious and higher

classified areas would need to provide in their SIPs an additional average of three percent per year emission reduction over each subsequent 3-year period beyond the initial 6-year period through the attainment year, consistent with what Congress specified in section 182(c)(2)(B) of the Act.

6. What is the timing of the submission of the ROP plan?

Section 182(b)(1) requires that moderate and higher classified areas submit their 15 percent ROP plans within 3 years after 1990. For the attainment dates under the 8-hour ozone standard, ~~EPA~~we proposes interpreting the CAA's language referring to the date of enactment of the 1990 CAA Amendments to mean the date of designations under the 8-hour standard. If ~~EPA~~we were to require the ROP plans to be submitted within 3 years after their nonattainment designation date (i.e., in 2007 if ~~EPA~~we designates in 2004), the plans would have to be implemented within 1 year after submission to ensure the 15 percent emissions reductions are achieved by the end of the relevant 6-year period (i.e., December 2008). ~~The EPA~~We believes this would likely not be sufficient time to ensure that the reductions would occur by the required deadline. Therefore, ~~EPA~~we

proposes that the ROP SIP be submitted within 2 years after nonattainment designation--namely by 2006. This would provide for 2 years for the State to develop and submit its ROP plan, and another 2 years for the control measures to be implemented.

7. How should CAA restrictions on creditable measures be interpreted? Which national measures should count as generating emissions reductions credit toward RFP requirements?

Section 182(b)(1) contains provisions that limit creditability toward meeting RFP for certain limited emission reduction measures required prior to the enactment of the CAA Amendments of 1990. The EPAWe believes these specific restrictions should continue to apply for purposes of the 8-hour NAAQS as written in the CAA. The EPAWe believes that Congress intended to prevent areas from taking credit for RFP only for those specific measures that were already adopted and in place (or required to be in place) prior to the date of enactment of the CAA Amendments of 1990 (November 15, 1990). The EPAWe believes that this same logic holds true for the RFP requirement as it applies to the 8-hour ozone standard, namely preventing credit toward

the mandatory RFP percent reductions for continuing reductions from those specific measures cited in the CAA that were already adopted and in place prior to the date of enactment of the CAA Amendments of 1990. There is no indication in the CAA that this exclusion should be changed. Congress mandated many emission reductions in the 1990 Amendments with no indication that they should not be credited to meeting RFP or attainment of any existing or revised NAAQS. Therefore, ~~EPA is~~we are proposing that all emissions reductions that occur from all Federal and any other measures (not otherwise identified in section 182(b)(1)(D)) implemented after the baseline emission inventory year would be creditable to the RFP requirement. For example, emissions reductions that occur after the 2002 baseline emission inventory year that result from the Tier 2 and sulfur in gasoline rules that were issued by EPA after the CAA Amendments of 1990 are creditable toward the RFP requirement for the 8-hour ozone standard. Another example of emission reductions that would be creditable toward the RFP requirement for the 8-hour ozone standard would be VOC emission reductions from certain MACT standards that will not produce emission reductions until after the 2002

baseline; these would include several recently promulgated MACT standards (such as those covering several surface coating operations) and also anticipated MACT standards that are expected to be promulgated in the summer of 2003. Obviously, reductions that occur prior to the baseline year would be incorporated into the baseline and could not be credited.

8. For areas covered by subpart 1 instead of subpart 2, how should the RFP requirement be structured?

As described above, the RFP requirement under subpart 1 is more general than that under subpart 2, and EPA thus has more flexibility in determining what RFP means under subpart 1. For instance, the State may rely on emission reductions of VOC or ~~NOx~~NO_x or a combination of both to meet its RFP requirement. However, ~~EPA is~~we are also mindful of the need for ensuring equity between areas with similar 8-hour ozone problems covered under subpart 1 and those covered under subpart 2. ~~The EPA is~~We are proposing rules for three kinds of areas: (a) Areas with attainment dates 3 years or less after designation; (b) Areas with attainment dates between 3 and 6 years after designation; and (c) Areas with attainment dates beyond 6 years after designation. Note that the Act

requires that attainment dates for areas subject only to subpart 1 be no longer than 10 years after designation.

a. Areas with attainment dates 3 years or less after designation. ~~The EPA~~We proposes an RFP requirement for these areas similar to that for areas under subpart 2 that are classified as marginal. Such an area would not be subject to a separate RFP requirement, but would have to attain the standard by its attainment date.

b. Areas with attainment dates between 3 to 6 years after designation. These areas would have attainment dates similar to subpart 2 areas classified as moderate. ~~The EPA~~We proposes two options for these areas:

(i) Option 1. This option would require the RFP plan to be submitted with the attainment demonstration within 3 years after designation of the nonattainment area. The SIP would have to show that all emissions reductions needed for attainment would be implemented by the attainment date. This situation would occur, for example, for an area with a base year inventory of 2002, designation in 2004, a required attainment SIP submission date of 2007 and an attainment date of 2010. Where areas have only 3 years after SIP submission before attainment, this option recognizes that

there may be only a short amount of time available to achieve any specified emission reduction beyond that needed to demonstrate attainment and therefore would not require a showing that a specified amount of emission reductions occur between the time of SIP submission and the attainment date.

(ii) Option 2. This option would requires these areas to be treated in a manner similar to subpart 2 areas classified as moderate. The RFP SIP would have to provide for a 15 percent emission reduction from the baseline year within 6 years after the baseline year. The RFP SIP would have to be submitted within 2 years after designation. However, since the area is subject only to subpart 1, NO_x emission reductions could be substituted for some or all of the 15 percent reduction requirement, consistent with EPA's NO_x substitution policy.[47] Also, ~~EPA is~~we are soliciting comment on whether a percentage other than 15 percent should be required as the minimum. Additional measures that would provide the remaining portion of the emission reductions needed for attainment would have to be submitted with the area's attainment demonstration within 3 years after

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[47]NO_x Substitution Guidance. December 15, 1993; available at http://www.epa.gov/ttn/oarpg/t1pgm.html)

designation.

c. Areas with attainment dates beyond 6 years after designation. These areas are similar in attainment dates to areas classified under subpart 2 as serious or higher. ~~The EPA is~~We are proposing that the RFP plan show increments of progress from the baseline emission inventory year out to the attainment date. The RFP SIP would first have to provide for a 15 percent emission reduction from the baseline year within 6 years after the baseline year. The 15 percent RFP SIP would have to be submitted within 2 years after designation. However, since the area is subject only to subpart 1, NO_x emission reductions could be substituted for some or all of the 15 percent reduction requirement, consistent with EPA's NO_x substitution policy. Also, ~~EPA is~~we are soliciting comment on whether a percentage other than 15 percent would be more appropriate. Then, for each subsequent 3-year period out to the attainment date, another RFP SIP would have to provide for an additional increment of progress no less than the amount of emission reductions that would be proportional to the time between the end of the first increment (in 2008) to the attainment date. This second RFP SIP would have to be submitted at the same time

as the attainment demonstration, namely within 3 years after designation.

9. How should the RFP requirements be implemented for areas designated for the 8-hour ozone standard that entirely or in part encompass an area that was designated nonattainment for the 1-hour ozone standard?

~~The EPA is~~We are proposing the following approach to address this issue. Develop a new baseline and new ROP/RFP emission reduction targets for the entire 8-hour standard nonattainment area (the old 1-hour standard nonattainment area and the newly added portion of the 8-hour standard nonattainment area). Emissions reductions from measures in the 1-hour ozone SIP that are achieved after the 8-hour ozone NAAQS baseline year could count (subject to creditability restrictions as discussed above in this proposed rulemaking) toward meeting the RFP requirement for the entire 8-hour area.

This approach would set an ROP target for the entire 8-hour ozone nonattainment area. The State would have to ensure that the target is at least as stringent as the 1-hour ROP/RFP target, thus ensuring no backsliding on the 1-hour NAAQS requirements. Under this approach, the new

ROP/RFP target for the 8-hour standard would replace the previous 1-hour ozone target (while ensuring that, at a minimum, the emissions reductions required to meet the old target are met). For example, the 1-hour ozone NAAQS nonattainment area may comprise four counties and have a target level for one future RFP increment of 350 tons/day of VOC and 300 tons/day of NO_x. The 8-hour ozone nonattainment area may comprise the initial 1-hour ozone standard nonattainment area and two more counties. The target for the same increment period for the entire six county nonattainment area may now be, for instance, 400 tons/day of VOC and 350 tons/day of NO_x (assuming that these emission reductions were consistent with the attainment demonstration).

~~The EPA~~We considered another option for this issue. This option, which is not being proposed, is discussed in a separate document available in the docket.[48]

~~10. Should EPA use the RFP requirement to address an upwind State's responsibility under section 110(a)(2)(D), which~~

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[48]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~January~~March 2003.

requires that the SIP provide for preventing a significant contribution to a downwind jurisdiction's nonattainment situation?

One of the problems identified by commenters is that transport of ozone and its precursors from emission sources in one or more nonattainment areas in an upwind State may prevent an area in a downwind State from attaining the standard by its attainment date unless the upwind area has the same or an earlier attainment date. The EPA's proposed approach for addressing long-range transport of ozone and its precursors is described elsewhere in this notice of proposed rulemaking.

Under the subpart 2 classification and attainment date structure, a source's emissions from a nonattainment area with a particular classification and attainment date may contribute to nonattainment in a downwind area with a lower classification and therefore an earlier attainment date. The downwind area (for example, a marginal area) may not be able to reach attainment by its mandated attainment date until the upwind area (for example, a moderate or above area) achieves most or all of its emissions reductions, which it would normally not achieve until close to its

~~attainment date. One comment letter from a State air pollution control agency suggested that EPA rely on the RFP requirement to ensure early reductions in areas in upwind States. Based on this idea, EPA is considering an approach under which the area in an upwind State with the later attainment date would be required to achieve greater emissions reductions for its RFP plan from sources that contribute to nonattainment in the downwind State's area on a tighter schedule (namely by the nonattainment date of the downwind State's area) than that required for reductions from other sources needed to attain the standard within the upwind area by the attainment date of the upwind State's area. This additional RFP constraint would therefore assist the downwind State's area in attaining the standard by its attainment date even if it were subject to transport from an upwind State's nonattainment area. This approach would apply to nonattainment areas in upwind States that EPA identifies under section 110(a)(2)(D) as contributing significantly to nonattainment or interfering with maintenance in another State. Of course, this proposed RFP constraint would likely not be sufficient to wholly address significant interstate transport; EPA's approach for~~

~~addressing this is discussed elsewhere in this notice of proposed rulemaking.~~

~~The EPA believes this approach partially addresses the problem of mismatched attainment dates in areas affected by transport and therefore proposes it for comment.~~

~~While we have not decided to go forward with this option at this time, we are continuing to examine it and, therefore, request comment on it. In particular, we request comment on possible legal rationales supporting this option. Public comments will help us determine how and whether to include this option in the final rulemaking.~~

| 11~~0~~. Will EPA's "Clean Data Policy" continue to apply under the 8-hour standard for RFP?

| ~~The EPA~~We issued a clean data waiver policy on May 10, 1995, which allows EPA to determine that an area has attained the standard and that certain requirements (e.g., RFP) will not apply so long as the area remains in

| attainment.[49] ~~The EPA~~We propose~~s~~ that this policy would

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[49]Memorandum of May 10, 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf.

remain effective under the 8-hour ozone NAAQS.

| 12~~1~~1. How will RFP be addressed in Tribal areas?

As mentioned elsewhere in this proposed rulemaking, the TAR provides the Tribes with the ability to develop Tribal implementation plans (TIPs) to address the NAAQS. However, it also provides the Tribes with flexibility to develop these plans in a modular way, as long as the elements of their TIPs are "severable." For example, each TIP submission must include a demonstration that the Tribe has authority to develop and run its program, the ability to enforce its rules, and the capacity and resources to implement the program it adopts. However, the modular approach provided for Tribes in the TAR allows the TIP to address a particular problem on the reservation. Therefore, it may include one or two source-specific requirements but may not include provisions for RFP and other SIP

| requirements. ~~The EPA~~We will review and approve these TIPs as a step in addressing an overall air quality plan to achieve health and environmental goals. In addition, a Tribe may later add other elements to the plan, or EPA may be obligated to step in to fill air quality gaps. In

| approving the TIPs, ~~EPA~~we will ensure that they will not

interfere with the overall air quality plan for an area when Tribal lands are part of a multi-jurisdictional area.

Because many of the nonattainment areas will include many jurisdictions, including both Tribes and States, it is important for the Tribes and the States to work together wherever possible to coordinate their planing efforts.

~~13~~2. How will RFP targets be calculated?

~~EPA~~We proposes~~s~~ a methodology for the calculation of ROP target levels of emissions that is based on the method developed for the CAA of 1990, while taking into account ~~the~~ ~~EPA~~our interpretation of CAA restrictions on creditable emissions and on ~~the EPA~~our proposal to use the 2002 inventory as the baseline inventory for the ROP requirement. The CAA of 1990 specifies four types of measures that were not creditable toward the 15% RFP requirement. These were:

(1) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990;
(2) Regulations concerning Reid Vapor Pressure that would go into effect in 1992;
(3) State regulations submitted to correct deficiencies in existing VOC RACT regulations or previously required RACT rules;
(4) State regulations submitted to correct deficiencies in I/M programs.

These four types of measures were all expected to result in

a decrease in emissions between 1990 and 1996. Of these four types of measures, RACT and I/M program corrections and the 1992 RVP requirements were completely in place by 1996 and therefore are already accounted for in the 2002 baseline. As a result, they would produce no additional reductions between 2002 and 2008 or later milestone years.

However, the pre-1990 Federal Motor Vehicle Control Program (FMVCP) will continue to provide benefits during the first two decades of the 21st century as remaining vehicles meeting pre-1990 standards leave the vehicle fleet. Because these benefits are not creditable for ROP purposes, in order to calculate the target level of emissions for ROP milestone years (i.e., 2008, 2011, etc.), states must first calculate the reductions that would occur over these years as a result of the pre-1990 FMVCP. ~~The EPA~~We propose~~s~~ the following methods to properly account for the non-creditable reductions when calculating ROP targets for the 2008 and later ROP milestone years.

Method 1: For areas that must meet a 15% VOC reduction requirement by 2008:

(1) Estimate the actual anthropogenic base year VOC inventory in 2002 with all 2002 control programs in place.

(2) Using the same highway vehicle activity inputs used the calculate the actual 2002 inventory, run MOBILE6 for 2002 and for 2008 with all post-1990 Clean Air Act measures turned off. This is accomplished using the NO CLEAN AIR ACT command as described in the MOBILE6 User's Guide. Any other local inputs for I/M programs should be set according the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June of 1990.

(3) Calculate the difference between 2002 and 2008 VOC emission factors and multiply by 2002 VMT. The result is the VOC emission reductions that will occur between 2002 and 2008 without the benefits of any post-1990 Clean Air Act measures. These are the non-creditable reductions that occur over this period.

(4) Subtract the non-creditable reductions calculated in Step 3 from the actual anthropogenic 2002 inventory estimated in Step 1.

(5) Reduce the VOC inventory calculated in Step 4 by 15%. The result is the target level of VOC emissions in 2008 in order to meet the 2008 ROP requirement. The actual projected 2008 inventory with all control measures in place and including projected 2008 growth in activity must be at or lower than this target level of emissions.

Method 2: For areas that qualify under Option 2 of Section 3 above and must meet an 18% VOC emission reduction requirement by 2008 with ~~NOx~~NO_x substitution allowed, following EPA's ~~NOx~~NO_x Substitution Guidance:

(1) Estimate the actual anthropogenic base year inventory in 2002 with all 2002 control programs in place.

(2) Using the same highway vehicle activity inputs used the calculate the actual 2002 inventory, run MOBILE6 for 2002 and for 2008 with all post-1990 Clean Air Act

measures turned off. This is accomplished using the NO CLEAN AIR ACT command as described in the MOBILE6 User's Guide. Any other local inputs for I/M programs should be set according the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June of 1990.

(3) Calculate the difference between 2002 and 2008 VOC emission factors and multiply by 2002 VMT. The result is the emission reductions that will occur between 2002 and 2008 without the benefits of any post-1990 Clean Air Act measures. These are the non-creditable reductions that occur over this period.

(4) Subtract the non-creditable reductions calculated in Step 3 from the actual anthropogenic 2002 inventory estimated in Step 1.

(5) Reduce the inventory calculated in Step 4 by 18%. The result is the target level of emissions in 2008 in order to meet the 2008 ROP requirement. The actual projected 2008 inventory with all control measures in place and including projected 2008 growth in activity must be at or lower than this target level of emissions.

Method 3: For all areas that must meet an additional reduction VOC requirement of 9% every three years after 2008 with ~~NOx~~NO_x substitution allowed, following EPA's ~~NOx~~NO_x Substitution Guidance. Each subsequent target level of emissions should be calculated as an emissions reduction from the previous target.

(1) Using the same highway vehicle activity inputs used the calculate the actual 2002 inventory, run MOBILE6 for 2008 (previously done in step 2 above) and 2011 with all post-1990 Clean Air Act measures turned off. This is accomplished using the NO CLEAN AIR ACT command as described in the MOBILE6 User's Guide. Any

other local inputs for I/M programs should be set according the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June of 1990.

(2) Calculate the difference between 2008 and 2011 emission factors and multiply by 2002 VMT. The result is the emission reductions that will occur between 2008 and 2011 without the benefits of any post-1990 Clean Air Act measures. These are the non-creditable reductions that occur over this period.

(3) Subtract the non-creditable reductions calculated in Step 2 from the 2008 target level of emissions calculated previously.

(4) Reduce the inventory calculated in Step 3 by 9%. The result is the target level of emissions in 2011 in order to meet the 2011 ROP requirement. The actual projected 2011 inventory with all control measures in place and including projected 2011 growth in activity must be at or lower than this target level of emissions.

| ~~K~~J. Are contingency measures required in the event of failure to meet a milestone or to attain the 8-hour ozone NAAQS?

1. Background

Under the CAA, nonattainment areas must include in their SIPs contingency measures consistent with section 172(c)(9). However, section 182(a) expressly exempts areas classified as marginal from this obligation. States with ozone nonattainment areas classified as moderate and above must include contingency measures in their SIPs consistent

with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls to be implemented in the event the area fails to meet an RFP milestone or fails to attain by its attainment date. These contingency measures must be fully adopted rules or measures which are ready for implementation quickly upon failure to meet milestones or attainment. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or EPA. Additional background information concerning the CAA contingency measure provisions appears in the General Preamble of April 16, 1992 (57 Federal Register 13510-13512 and 13520); and Section 9.2 of "Guidance for Growth Factor, Projections, and Control Strategies for the 15 percent Rate-of-Progress Plans" (EPA-452/R-93-002), March 1993.

The guidance indicates that States should adopt and submit contingency measures to provide a three percent emission reduction (beyond what is needed for attainment or the ROP requirement) for moderate and above ozone areas, which EPA concludes is generally acceptable to offset emission increases while States are correcting their SIPs.

Also, EPA guidance suggests that contingency measures that a State adopted for purposes of the 15 percent ROP requirement may be used as the contingency measures for any post-1996 3-year requirements for RFP, provided they have not been triggered and used as contingency measures for the 15 percent plan. See Section 5.6 of "Guidance on the Post 1996 Rate-of-Progress Plan (ROP) and Attainment Demonstration" (corrected version of February 18, 1994). Furthermore, Federal measures that result in additional emission reductions beyond those needed for attainment or ROP in an area could serve as contingency measures for a failure to attain or meet the ROP requirements. The EPA has approved the use of Federal measures as part of contingency measures in several EPA actions approving 1-hour ozone SIPs (62 FR 15844 (April 3, 1997), 62 FR 66279 (December 18, 1997), and 66 FR 30811 (June 8, 2001), 66 FR 586 and 66 FR 634 (January 3, 2001)).

2. Proposal

For the 8-hour ozone standard, ~~EPA~~we intend~~s~~ to continue to observe its existing policies regarding contingency measures for areas covered under subpart 2. Areas that are nonattainment for the 8-hour ozone standard

that have unused adopted contingency measures for the 1-hour ozone NAAQS may use those measures as appropriate as contingency measures for the 8-hour ozone NAAQS. For areas covered under subpart 1, ~~EPA~~we will provide additional guidance on the contingency measure requirement, but it is likely that it will be patterned after the subpart 2 requirement.

~~L~~K. What requirements should apply for RACM and RACT for 8-hour ozone nonattainment areas?

1. Background

Subpart 1 of part D includes general requirements for all designated nonattainment areas, including a requirement that a nonattainment plan provide for the implementation of all reasonable available control measures (RACM) as expeditiously as practicable, including such reductions that that may be obtained through reasonably available control technology (RACT). Most areas designated nonattainment for the 1-hour ozone standard are also subject to the requirements of subpart 2 of part D, including its detailed control measure provisions. Under subpart 2, RACT requirements for ozone nonattainment areas apply independent of the emissions reductions needed to attain the standard.

The RACT requirements also apply in attainment areas within the current ozone transport region (OTR) (or any additional OTR that EPA may establish under the CAA), regardless of the emission reductions needed to attain. The RACT requirement applies to both ozone precursors--NO_x and VOC. Since 1990, ~~EPA~~we ha~~s~~ve issued guidance on the RACT requirements in subpart 2.[50] Prior to enactment of the CAA Amendments of 1990, EPA also issued detailed guidance on RACT for ozone nonattainment area SIPs.[51] This guidance continues to be relevant.

Elsewhere in this proposed rulemaking, ~~EPA is~~we are proposing one option for classifying 8-hour ozone nonattainment areas in which some areas would be subject to the requirements of subpart 1. Unlike subpart 2, which

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[50]40 CFR Part 52, State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule. April 16, 1992. (57 FR 13498); 40 CFR Part 52, State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990; Implementation of Title I; Proposed Rule. November 25, 1992. (57 FR 55620).

[51]"Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations-Clarification to Appendix D of November 24, 1987, Federal Register." Ozone/Carbon Monoxide Program Branch, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency. May 25, 1988; Federal Register of November 24, 1987, Appendix D (52 FR at 45105).